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This Issue in Brief

Probation Officer Burnout: An Organizational Disease/An Organizational Cure.—In recent years, considerable attention has been given to burnout of public service personnel; however, little has been published on burnout of probation officers. Author Paul W. Brown looks at organizationally caused burnout and some approaches to moderate it. According to the author, most correctional agencies are based on a military-like structure, and probation departments seem to be no exception. This traditional structure may be responsible for burnout, and there is little a probation officer can do about it. Changes will have to be made by managers who are willing to accept and implement more democratic management styles.

The Privatization of Treatment: Prison Reform in the 1980's.—According to author Francis T. Cullen, a contributing factor to the swing in criminal justice policy to the right has been the failure of progressives to provide plausible policy alternatives. He argues that a viable avenue of prison reform is the privatization of correctional treatment programs—a reform that is politically feasible because it capitalizes upon both the continuing legitimacy of the rehabilitative ideal and the emerging popularity of private sector involvement in corrections. While a number of concerns about profit-making in prisons must be addressed, the author contends, the major advantage of privatizing treatment is that it severs the potentially corrupting link between custody and treatment and thus helps to structure interests within the prison in favor of effective correctional rehabilitation.

A Theoretical Examination of Home Incarceration.—Developing a theoretical rationale for the use of home incarceration as an alternative sentence, authors Richard A. Ball and J. Robert Lilly argue, based on a previously developed theoretical position as to the goals of sentencing generally, that "punishment" is ultimately directed at the restricted reprobation of an act in such a way as to provide for the reparation of that particular conception of social reality agreed upon in a given society. According to the authors, home incarceration has advantages in that it is of easy communicability in terms of present conceptions of social reality, of limited complexity and fairly obvious potential impact, and of reasonable cost. Since it is also characterized by reversibility, divisibility, compatibility, and perceived relevance to organizational goals, it is considered to possess the theoretical advantages necessary to adoption.

Probation Supervision: Mission Impossible.—According to author John Rosecrance, there is a consensus that probation has failed to reduce recidivism and has lost credibility with the public and other criminal justice

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agencies. Probation supervision has proven ineffective, he contends, because of bureaucratic dynamics and the conflicting nature of officer-client relationships. Although there are calls for drastically overhauling probation services and revitalizing its mission, the prevailing alternatives—(1) service orientation, (2) differential supervision, and (3) intensive supervision—are incremental and fail to address fundamental problems. The author advocates eliminating probation supervision and allowing other agencies to assume these responsibilities. Probation would be left with a feasible and unambiguous mission—providing objective investigation services to the court.

The Dimensions of Crime.—Author Manuel Lopez-Rey discusses a subject addressed at the seventh United Nations Congress on the Prevention of Crime, Milan, 1985: What are the dimensions of crime? Contending that criminal justice policy is formulated without knowledge of the true scope of crime worldwide, the author holds that what is thought of as constituting crime is only common, conventional crime, and what is not taken into account is unconventional crime—such as terrorism, torture, and summary execution—prevalent in dictatorial regimes where crime often goes unreported. The author addresses how malfunctions in the criminal justice system affect the dimensions of crime, stressing the need to define what is crime by law and to broaden conceptions of crime to include less conventional crime. Influencing factors such as economic crime and criminal negligence are also discussed.

Security and Custody: Monitoring the Federal Bureau of Prisons' Classification System.—Authors Michael Janus, Jerome Mabli, and J. D. Williams report on the Federal Bureau of Prisons' system—implemented in 1979—for assigning inmates to institutions (Security Designation) and to various levels of supervision (Custody Classification) within institutions based on background and behavioral variables. This security and custody system replaced an informal one which relied heavily on individual discretion. The new method quantified the factors involved in decisionmaking and shifted the focus of classification procedures from the diagnostic-medical model to the humane control model. Since 1981, the Bureau of Prisons has monitored the system by recording monthly security and custody breakdowns as well as inmate misconduct and escape information for each of its approximately 50 institutions. This study will report analysis of these data both cross-sectionally and longitudinally at the institution level.

Repeating the Cycle of Hard Living and Crime: Wives' Accommodations to Husbands' Parole Performance.—Author Laura T. Fishman examines the social accommodations made by prisoners' wives to their husbands' post-prison performance. To construct an ethnographic account of the social worlds of 30 women married to men incarcerated in two prisons, the author employed a combination of methods—indepth interviews with wives, examination of prison records, summaries of women's "rap sessions," and a variety of other sources of data. She found that of the 30 women, 15 welcomed their husbands home from prison, and the wives used a variety of accommodative strategies to support their husbands' settling down and to deter them from resuming hard living patterns and criminal activities. The author concluded that none of these strategies were as effective as wives anticipated; wives do not appear to have much influence on whether or not their paroled husbands resume criminal activities, get rearrested, and return to jail.

Community Service Sentencing in New Zealand: A Survey of Users.—Beginning in 1981, New Zealand law authorized sentencing offenders to perform from 8 to 200 hours of unpaid service to a charitable or governmental organization. Authors Julie Leibrich, Burt Galaway, and Yvonne Underhill conducted structured interviews with samples of probation officers, community service sponsors, offenders sentenced to community service, and judges to determine the extent of agreement on the purpose of the sentence, ways in which the sentence was being implemented, benefits thought to flow from the sentence, and the extent of satisfaction with the sentence. According to the authors, the New Zealand experience suggests that community service is a feasible and practical sentencing option. They caution, however, that consistency of administration requires reaching agreement as to the purpose of the sentence and its relationship with other sentences. A number of implementation decisions also need to be resolved, including the role of the offender in selecting a community service sponsor, the role of the judge and probation officer in determining a specific placement, development of working relationships between probation officer and community service sponsor, and the need for a backup sanction.

Assessment Centers as a Management Promotion Tool.—An assessment center or the multiple assessment approach is the careful analysis and programmed assessment of management ability using a variety of job-related criteria. This approach has been used for decades in companies such as IBM, General Electric, American Telephone and Telegraph, and numerous government agencies. The variables or dimensions used to test an applicant's attributes vary from organization to organization, as do the techniques used to test these dimensions. Author William V. Pelfrey reviews the typical techniques used in the multiple assessment approach, the reliability and validity of the approach, and the applicability of assessment centers to the field of corrections. The author contends that the assessment center concept provides a valuable tool which administrators can use to make the best decisions on how to select, evaluate, and promote correctional managers.

Sentencing Guidelines: To Be or Not To Be.—According to author Chris W. Eskridge, the concept of sentencing guidelines, while suffering setbacks in some jurisdictions, is a notion that appears to be on the move. He points out that at least 29 states now use some form of sentencing guidelines; some state courts have been involved in a Federally funded project to develop, and to test the feasibility of, multicounty/regional voluntary sentencing guidelines. Moreover, at least five local courts have adopted voluntary guidelines and have published preliminary evaluations of their experiments. And—in October 1984, after numerous attempts—Congress passed legislation mandating the development of Federal sentencing guidelines. Author Eskridge contends that while many papers, reports, and journals extol the virtues of sentencing models, few offer any sound evaluation of their impact. He points out that the procedure is so new that a complete and clear analysis of impact is not yet available. His article presents a synthesis of the available literature regarding the effect of sentencing guidelines and proposes a series of adjustments and alternative approaches for achieving desired effects.

All the articles appearing in this magazine are regarded as appropriate expressions of ideas worthy of thought, but their publication is not to be taken as an endorsement by the editors or the Federal probation office of the views set forth. The editors may or may not agree with the articles appearing in the magazine but believe them in any case to be deserving of consideration.

Probation Officer Burnout

An Organizational Disease/An Organizational Cure

BY PAUL W. BROWN
United States Probation Officer, McAllen, Texas

DURING THE last 10 years the effects of stress and burnout have been receiving increasing attention. Before 1974 the term burnout had not appeared in print (Cherness, 1980), but now, according to one of the authorities in the field, it is getting the attention it deserves. "It has been called the crisis of the '80's and even the disease of modern life." (Maslach, 1982).

In the field of probation and parole (hereafter referred to only as probation), there has been little published on burnout and stress. A review of the *Criminal Justice Periodical Index* from 1980 to 1984 uncovered no article specifically on probation officer stress and burnout. The *Federal Probation* index of articles from 1970 to the present had two articles with either stress or burnout in their titles. However, no article could be found dealing specifically with probation officer stress and burnout. There is no shortage of awareness of stress and burnout in criminal justice literature; however, most of the literature applies to police and correctional (institutional) personnel. For example, there were 41 references to stress in the 1983 *Criminal Justice Periodical Index,* with perhaps only one applying to probation officers.[1]

Although numerous books were found on stress and burnout, not one was found on how they affected probation officers. In fact, not even a reference to a book could be found in the literature reviewed.

In spite of there being little published regarding stress in our field, there has long been recognition of the deleterious effect. Stress management training was given to this writer about 1975 when with the California Division of Paroles and in 1982 in the Southern District of Texas. However, this training was primarily how to deal with stress on a personal basis within the agency. What needs to be addressed is how to reduce organizationally caused stress.

What is This Thing Called Burnout?

Maslach notes that there is no single accepted definition of burnout, and she lists 15 possible definitions in her article (Maslach, 1982). Whiton Paine in *Job Stress and Burnout* writes that burnout stress syndromes (BOSS) are

> ...the consequence of high levels of job stress, personal frustration, and inadequate coping skills, have major personal, organizational, and social costs—and the costs are probably increasing.

Pamela Patrick, in a book directed to health care workers, defines burnout as

> ...the feeling of emotional exhaustion, negative attitudes shift, and sense of personal devaluation that occurs over time and in relation to high stress work environment.

Dr. Patrick notes that burnout is a process that thrives in stressful environments and develops slowly (Patrick, 1981).

According to Cherniss, burnout is the "psychological withdrawal from work in response to excessive stress or dissatisfaction. A "calling" becomes a job,

> ...one no longer lives to work but works only to live. In other words the term refers to the loss of enthusiasm, excitement, and sense of mission in one's work.

We can also look at burnout by signs. One such sign is "going by the book." In so doing, the worker can avoid an emotional involvement. Other signs are "exhaustion, insomnia, ulcers, migraine headaches, and ... neck and backaches" (Thacker, 1979).

General fatigue, both on and off the job, is another sign of burnout (Welch, et al., 1982). Most of the sources reviewed for this article were in general agreement with the signs. As Welch, et al., wrote, burnout is like the common cold, "symptoms are remarkably alike regardless of the cause."

One thing that becomes clear is that stress is the root of burnout. To deal with burnout, we must deal with stress. However, before we move on to some possible solutions, we will examine the environment in which the probation officer normally works: the bureaucracy.

The Bureaucracy

The hypothesis of this article is that there is burnout among probation officers and that part of the reason for the burnout is the organizational structure, i.e., the traditional bureaucracy.

Most correctional agencies are "centralized hierarchical organizations" (Beshears, 1978) and are "built on a traditional organization theory that results in a bureaucracy" (Koontz, 1978). Koontz continues,

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[1] The reference could not be located.

> . . .bureaucraticized probation organizations stress routine operations and have centralized decisionmaking processes. It is questionable if such organizations are flexible enough to meet the changes occurring within many communities. These bureaucratic probation organizations were created when the rate of change was relatively slow; and are accustomed to operating in a fairly undifferentiated and stable environment and under conditions of predictability.

There is little doubt that most probation offices fit the description of a bureaucracy, both by being a governmental organization and having the traditional military chain of command. Personnel titles such as officers and chiefs reinforce the nature of the organization. The focus of this article will be the *relevant environment* of—rather than the *total environment* of—the bureaucracy, as the managers and supervisors have more effective control over the former.

One basic decision of the chief is how he will manage his department: as a centralized hierarchical organization on one side or a democratic organization on the other or someplace in between. It is important that managers know that "bureaucratic constraints" are one source of burnout, and that if they are to reduce the negative effects of burnout, they must make the environment a more positive place in which to work (Edelwich and Brodsky, 1980).

Douglas McGregor's Theory X and Y is familiar to most of us. The assumptions of X are, basically, the employee dislikes work and will avoid it; whereas in Y, the employee enjoys work (Bobbitt, et al., 1978). A participatory style of management would be more consistent with Theory Y. As an example, the North Carolina Department of Corrections successfully applied some of the concepts of participatory management to the operation of 11 diagnostic centers. That agency's participatory model proved itself with a complicated task such as developing a comprehensive procedural manual for diagnostic services as well as a more simple task of producing transfer procedures (Beshears, 1978).

A more current management tool is Theory Z, whose origin may or may not be Japanese. Archambeault recommends the application of Theory Z to correctional management, not to reduce stress, but to increase worker productivity. He lists three steps which must be taken by management:

> First, management must increase the level of trust between worker and manager. Second, management must develop a *holistic concern* for the worker's welfare. Thirdly, management must develop an effective system of *shared decisionmaking* (Archambeault, 1982).

The same factors which Archambeault sees as increasing productivity can also serve to reduce stress, as will be covered later in this article. What becomes clear is that the probation bureaucracy does not have to operate as a traditional one with centralized hierarchical organization.

Is there research to support the hypotheses that probation officer burnout exists? In 1985, John Whitehead published the results of his study on probation officer burnout involving almost 1,000 probation and parole workers. Whitehead saw his study as having an important difference from those conducted on other public service personnel: the correctional system has been publicly criticized as ineffective, and it works with an involuntary client.

Whitehead found that probation workers expressed less frequent feelings of emotional exhaustion than did human service workers sampled but that the probation workers' feelings were more intense. Seventeen percent of the officers reported "a feeling of being emotionally drained" from a few times a week to every day. Although Whitehead did not find burnout to be extensive, he did conclude that it affects a "sizable minority of officers" and should not be ignored. Whitehead proposed that research should be done on the sources of officer burnout so that dealing with it can be done more effectively (Whitehead, 1985 B).

Apparently, from the same 1981 survey, Whitehead published a research paper specifically on probation officers in New York state (1983 A). He found no "crisis-proportion problem" of job burnout and dissatisfaction among the New York officers, but he again found a sizable minority who were adversely affected. It was also determined that many officers were unhappy with both ". . .their level of participation in decisionmaking and with feedback they receive from supervisors." Whitehead notes that Theory Z advocates believe that their management style would answer both of these complaints of inadequate participation and feedback.

One source postulates that it is virtually impossible to prevent burnout, and it is better to look at how to deal with it, as it is bound to happen during one's career (Edelwich and Brodsky, 1980). Knowing to some reasonable degree what causes stress and burnout can give the managers some direction as how to better deal with it. The remainder of this article will look at what some authorities claim causes stress and burnout and what might be done about it.

Some Approaches to Dealing With Burnout

Ayala Pines, writing about "Changing Organizations" in Paines' book, *Job Stress and Burnout,* emphasizes the importance of the organization on stress.

> Not having the opportunity to participate in decisions that affect one's work is another organizational stressor and burnout correlate. . . .in spite of all individual differences, the work environment has a crucial effect on burnout. . . .Thus, both the individual and the organization interested in preventing burnout cannot err by focusing their attention on the work environment (Pines, 1982).

Assuming he is given the proper support and environment the *supervisor* according to some, is the key figure. Constance Shapiro wrote an excellent article, "Creative Supervision: An Underutilized Antidote," in the Paine book. To her, the origin of burnout is not in the individual or the organization, but

> in the interaction between them. . . . Creative supervisory practices operate directly to facilitate healthy interaction between the individual and the work setting. . . . Supervisors need to utilize specific skills in order to reduce the impact of burnout on their staff. Unfortunately, many persons are promoted into supervisory positions by virtue of competence in their professional roles, not by virtue of supervisory knowledge and skills (Shapiro, 1982).

In the next section, we will review how the supervisor can be better utilized to prevent burnout. An unanticipated consequence of the supervisor's role in this challenging area is the resulting "investment against supervisory burnout" (Shapiro, 1982).

However, before going on, mention should be made of the recurring theme of *In Search of Excellence, Lessons from America's Best-Run Companies.* Whether it is 3M, IBM, Caterpillar, or Disney Productions, the central theme of these successful companies is their faith and trust in their employees. The degree of interaction of the chief executive officers with the employee in even multibillion dollar corporations, does little to instill faith in the validity of a rigid chain of command.

Supervisors, the Key?

The cost of burnout to the organization is expensive: "lost idealism, turnover, tardiness, absenteeism, poor delivery of services, and the like" make the prevention of burnout worthwhile (Pines, 1982). Research has indicated that there are certain personalities that are more prone to burnout and that there are things that individuals can do to prevent burnout. However, the focus here will be what the organization can do to prevent stress and burnout.

In "Creative Supervision," Shapiro lists nine examples of how supervisors can reduce stress:

- leadership that provides support, structure, and information;
- communication that is timely, appropriate, and accurate;
- an environment that is planful, efficient, and orderly;
- rules and policies that are explicit;
- workers who have freedom to be self-sufficient and make their own decisions;
- room for staff creativity and innovation;
- support and nurturing from supervisory staff;
- manageable job pressure; and
- peer networks of friendship and support among staff.

Support and leadership of the supervisor are vital. One study demonstrated burnout to occur more commonly when the supervisor was "frequently unavailable and/or dictatorial and arbitrary" (Cherniss, 1980). Cherniss adds that if support is to have a positive benefit, it cannot reduce the worker's autonomy. The supervisors can act as "buffers and advocates" for their staffs when the staff feels "besieged" by outside groups.

One area where supervisors can provide assistance is in helping staff work out problems, yet allow staff to "retain a sense of ownership of their work" (Cherniss, 1980). Supervisors' difficulty in providing the type of assistance that is needed is caused by their lack of supervisory skills and the pressures they must face. According to Cherniss, most supervisors are promoted because of their skills as line workers. This certainly seems true in the probation business. As a result, every effort should be made to provide initial and ongoing training to supervisors. They should be provided pertinent reading materials, encouraged to attend in-service training, and encouraged to take advantage of community resources such as seminars offered by related agencies and college courses in supervision/management. Coffey in his text on correctional administration writes, "probably the most profound axiomatic observation that could be made about the nature of correctional supervision is that it is, or should be, a teaching position" (Coffey, 1975).

The more the supervisor knows, the more assistance he can provide to the officer. Shapiro sees training as one of the supervisor's primary roles. Not only the training of the new employee, but the ongoing training of the veteran officer who is subject to burnout.

> Training can serve to invigorate staff by providing ideas of new, different, more sophisticated, or more advanced ways of performing work responsibilities. The supervisor who initiates contacts with community educational resources and who follows through by helping trainer and staff identify learning needs, anticipates that training can be a valuable preventive intervention against burnout (Shapiro, 1982).

Another valuable role of the supervisor is to "maximize organizational flexibility." Simply by rearranging the traditional 8-hour workday, 40-hour workweek by using flexitime, burnout can be minimized (Shapiro, 1982).

The supervisor's role in reducing burnout is crucial. The cost to the organization is minimal if some of these concepts are implemented and costly to the organization if they are not implemented.

Staff Interaction

Not only is the staff's interaction with the supervisor important, but the social interaction of the staff is a positive factor which can help reduce stress and burnout. Cherniss points out five areas where staff interaction can have positive benefits: 1) discussing work problems can help reduce "emotional tension and helps the worker acquire better perspective and understanding," 2) "colleagues are an invaluable source of technical information and practical advice," 3) colleagues provide feedback in order to evaluate the worker's own work, 4) colleagues can group together "in conflicts with the organization or community groups," and 5) colleagues can be an "important source of stimulation." Cherniss does caution that not all research confirms the positive aspects of staff interaction.

Cherniss lists three areas of burnout in the work environment: "organizational design, leadership and supervision, and social interaction among staff." To make any or all of these areas more responsive is feasible and within the control of the chief probation officer, as most of the resources to implement them are generally available.

One Other Aspect

One last stress reducer will be reviewed as it is frequently mentioned in the literature on stress: exercise. It could be relatively inexpensive to the organization if the officers were encouraged to participate in an exercise program by granting several hours leave per month for this purpose.

Dr. Patrick outlines the value of such a program:

> Promoting the achievement and maintenance of physical well-being can reduce sick leaves, increase job productivity, improve attitudes, and enhance the worker's self-image.

An article in *Law and Order* on the benefits of a regular exercise program refers to a publication sponsored by the Department of Justice which reported on a survey of law enforcement agencies. Of those responding, 75 percent reported benefits such as lower number of heart attacks, reduced on-the-job injuries, and less sick time. Also reported was an increased ability to relax as a result of tension being reduced (Gilbert, 1984). These benefits were the result of more formal exercise programs.

Conclusion and Summary

It seems fair to conclude that probation officer burnout is a problem that needs to be addressed by managers. Providing training on how the officer can deal with stress and burnout is not sufficient. Managers must look at what they do to cause organizational stress and what can be done to reduce that stress as much as possible.

The proposals in this article would not be unreasonably expensive for managers to implement. In fact, the cost of most would be more a commitment to changing management styles than an increase in expenditures. Perhaps the changing of management styles would, in reality, be the more difficult to implement.

Assuming there is validity to organizationally caused stress and burnout—and knowing the costs of that stress and burnout to the officer, the organization, and the client—it would be worthwhile for probation departments to analyze their organizational behavior. In so doing, it is very likely that ways to reduce staff stress and burnout will be found.

REFERENCES

Archambeault, W. "Management Theory Z: Implications for Correctional Survival Management." *Federal Probation*, September 1982, pp. 7-11.

Beshears, E. "Translating Policy to Procedure: Participatory Management in Corrections." *Federal Probation*, September 1978, pp. 51-56.

Bobbitt, H., Breinholt, R., Doktor, R., and McNaul, J. *Organizational Behavior: Understanding and Prediction*. Englewood Cliffs, New Jersey: Prentice Hall, Inc., 1978.

Cherniss, G. *Staff Burnout: Job Stress in the Human Services*. Beverly Hills, California: Sage Publications, Inc., 1980.

Coffey, A. *Correctional Administration; the Management of Probation, Institutions, and Parole*. Englewood Cliffs, New Jersey, Prentice Hall, Inc., 1975.

Edelwich, J. and Brodsky, A. *Burnout: Stages of Disillusionment in the Helping Professions*. New York: Human Sciences Press, 1980.

Gilbert, E. "Physical Fitness for Law Enforcement." *Law and Order*, August 1984, pp. 43-45.

Koontz, J. "Change vs. Probation Management." *Federal Probation*, March 1978, pp. 28-34.

Manning, W. "An Underlying Cause of Burnout." *Corrections Today*, February 1983, pp. 20 and 22.

Paine, W. (ed.) *Job Stress and Burnout: Research, Theory, and Intervention Perspectives*. Beverly Hills, California: Sage Publications, 1982.
  Paine W. "Overview: Burnout Stress Syndromes and the 1980's."
  Maslach, C. "Understanding Burnout: Definitional Issues in Analyzing a Complex Phenomenon."
  Pines, A. "Changing Organizations: Is a Work Environment Without Burnout an Impossible Goal?"
  Shapiro, C. "Creative Supervision: An Underutilized Antidote."

Patrick P. *Health Care Worker Burnout: What It Is, What To Do About It*. Chicago: An Inquiry Book, 1981.

Peters, T. and Waterman, R.H., Jr. *In Search of Excellence: Lessons from America's Best-Run Companies*, New York: Warner Books, Inc., 1982.

Smith, J. "Rekindling the Flame: The Use of Inservice Training as Burnout Prevention." *Federal Probation*, June 1982, pp. 63-66.

Thacker, J. "Reducing Burnout." *Corrections Today*. November-December 1979, pp. 50-51.

Welch, D., Medeiros, D., and Tate, G. *Beyond Burnout: How To Enjoy Your Job Again When You've Just About Had Enough*. Englewood Cliffs: Prentice Hall, Inc., 1982.

Whitehead, J. "Job Burnout in Probation: The Case of an Eastern State: New York." *Journal of Probation and Parole*, Fall 1983, pp. 16-21. (A).

Whitehead, J. "Job Burnout in Probation and Parole: Its Extent and Intervention Implications." *Criminal Justice and Behavior*, March 1985, pp. 91-110 (B).

The Privatization of Treatment: Prison Reform in the 1980's

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OVER THE course of the past decade, the idea that progressive reform is possible within the criminal justice arena has been under sustained attack. Conservatives dismiss such continued efforts at making the world better as secular ventures that at best cause us to "lose ground" in the attempt to solve social problems and at worst lead to the tragic victimization of innocent citizens (Murray, 1984; Wilson, 1975). More instructive, however, is the extent to which those on the left have embraced this vision of reform as a prescription for failure. Indeed, the hard lessons that benevolence can be corrupted has resulted not merely in caution before undertaking reform but in a pessimism that labels do-gooders as naive and paternalistic carriers of social harm (Rothman, 1978, 1980). Indeed, the cynicism runs so deep that it is popular to argue that progressives should endorse a "shift in perspective from a commitment to do good to a commitment to do as little mischief as possible" (Gaylin and Rothman, 1976:xxxiv) and that they should consider the wisdom of simply refraining from criminal justice intervention altogether. "That we should leave the system alone, intervening as little as possible and only when necessary," Doleschal (1982:151) has observed, "is an idea whose time has come, and an increasing number of authors are expressing it" (cf. Travis and Cullen, 1984; Sieber, 1981).

But this pessimism on the left—its inability to sustain its "endurance of ideals" (Bayer, 1981) in the face of documented failures (Rothman, 1980)—has had its costs. It has led to something of a paralysis on policy issues, an inability to define meaningful avenues of progressive reform (Cullen and Wozniak, 1982). To be sure, some agendas have been suggested. The "justice model" placed its faith in the cold rigidity of law to minimize the damage done to deviant populations under the discretionary control of the state (Fogel, 1979; von Hirsch, 1976). Yet the returns on this reform are not promising. No new era of humanity has been forthcoming; indeed, if anything, this reform has been co-opted to serve conservative crime control ends (Cullen and Gilbert, 1982; Cullen, Gilbert, and Cullen, 1983; Greenberg and Humphries, 1980). And there remains the more radical call to create criminal justice through social justice. In light of existing political realities, however, this call rings hollow to all but a few in the field.

The void created by the pessimism among progressives has not been left unfilled. Much like Ronald Reagan reacted to Jimmy Carter's diagnosis of malaise, conservatives have shown little reluctance to reject the idea that nothing works and instead have offered a positive solution to crime control: getting tough on crime (Gross, 1982; Cullen and Wozniak, 1982). Within academia, this agenda has combined realism and the legitimacy of science to justify an increasingly popular policy: selective incapacitation. The logic is persuasive. While progressives were correct in showing that institutions do not have the power to transform evil into good, they ignored that institutions do accomplish one thing—they remove people from society. Equipped with regression tables, all that is left is to establish the profile of the habitual criminal and then to remove those with such criminogenic traits from society (Wilson, 1975). Such policy analysis, it is claimed, avoids idealism and promises crime control at the most cost-effective rate available.

Of course, those advocating the *theory* of selective incapacitation have yet to demonstrate that they have the technology to select the habitually criminal or that this "reform" would not be resisted and undermined by the participants in the justice system (Cohen, 1983; Clarke, 1974; van Dine, Conrad, and Dinitz, 1979). But this is not the point. The issue is that conservatives have an agenda that they offer not with doubt but with enthusiasm; one which promises—even if this is a false or questionable promise—to reap considerable utilitarian rewards.

In this context, progressives have yet to make an effective counter-response. In particular, within the difficult area of prison reform, few fresh and "realistic" ideas have been forthcoming. Where, then, should progressives turn?

My attempt to address this question begins with the proposition that those on the left made a fundamental mistake when they moved forcefully to discredit rehabilitation as a viable correctional ideology (cf. Allen, 1981). While my colleagues and I have developed this point in more detail previously (Cullen and Gilbert, 1982; Cullen and Wozniak, 1982; Travis and Cullen, 1984), the essence of the argument can be summarized in two contentions that undergird the proposition offered above. First, in unmasking the often pernicious practices justified by state enforced therapy (Fogel, 1979; Kittrie, 1973), progressives failed to consider the benefits of a strong rehabilitative ideology (Cullen and Gilbert, 1982:246-263). Thus, informed by science and consistent with a cultural belief that problems can be solved, treatment ideology posed a powerful rationale for correctional reform and a difficult philosophy for conservatives to discredit (Rothman, 1980). It gave progressives a legitimate platform on which to make a stand.

Second, those on the left failed to consider carefully what they would offer in place of rehabilitation as their guide to criminal justice reform. As mentioned above, many progressives had little concrete idea of where next to turn; debunking rehabilitation was the extent of their contribution. Others, more schooled in criminal justice, did a better job of furnishing a seemingly plausible reform agenda. Seeking to limit state intervention and insulate offenders against excessive coercion, they popularized the "justice model." Indeed, they enjoyed success in convincing many on the left that due process and determinate sentencing would enhance the quality of justice dispensed by the state by curbing the abuses inherent in the positivist model of individualized treatment and indeterminate prison terms. This strategy rejected the "heady optimism and confidence of reformers in the past, and their belief that they could solve the problem of crime," and instead was informed by "a determination to do less rather than more—an insistence on not doing harm" (Gaylin and Rothman, 1976:xxxiv). But again, there is scant evidence that this agenda should have been so enrapturing to progressives. At best, the justice model has been implemented in piecemeal fashion and has not made conditions much different (Goodstein and Hepburn, 1985). At worst, it has been co-opted by crime control interests and has proven to be, in Sieber's (1981) terms, a "fatal remedy" (Cullen, Gilbert, and Cullen, 1983).

Apart from the unfavorable results of the evaluation studies, however, the justice model advocates have unwittingly given legitimacy to a range of conservative assumptions about crime and its control (cf. Paternoster and Bynum, 1982). First, they agree that correctional rehabilitation does not work. Despite empirical evidence to the contrary (Binder and Geis, 1984; Gendreau, 1981; Gendreau and Ross, 1979, 1980; Martinson, 1979; Palmer, 1983, 1984), treatment interventions and other do-gooder responses are defined as irrational. Second, in rejecting the positivist model of crime, they embrace a volunteerism that denies—reluctantly and implicitly perhaps—the social roots of crime. Much like James Q. Wilson (1975), they do not see causal analysis as a feasible strategy for making criminal justice policy. Third, in decontextualizing offenders, they assume that the only obligation of the state is to punish those who violate the law equally. No consideration of the state's role in perpetuating the criminogenic conditions that fostered a person's criminal act should enter into the calculus used to determine the price to be paid. And fourth, while they prefer the cleaner terminology of "just deserts," they advocate retribution as the guiding standard of criminal sentencing. This is a critical point since it leaves progressives in the position of concurring with the political right that exacting a just measure of pain should be the overriding function of corrections. Thus, the discussion is changed from one which questions *if* punishment is legitimate—as those in the rehabilitation camp had done—to one which merely asks *how much* punishment should occur. Notably, this is a losing debate for progressives to undertake. Apart from cost savings, the appeal of short sentences is not widespread. By contrast, long sentences not only reap political benefits for legislators who jump on the get tough bandwagon but also are ostensibly utilitarian: they promise to reduce crime by locking people up.

My contention, then, is that progressives have played into the hands of the conservatives. They have abandoned a powerful ideology—rehabilitation—that has justified and energized criminal justice reform; they have fostered a pessimism that portrays all past campaigns to do good as failures and warns that all future efforts are likely to suffer a similar fate; and they have embraced assumptions that undercut the traditional positivist stance that getting tough is not a sensible solution to, much less a panacea for, the crime problem. It would be unwarranted, of course, to suggest that these actions are fully to blame for the rapid swing in criminal justice policy to the right. The conservatives' growing political clout and the changing structural circumstances which have nourished their influence are clearly more responsible. Regardless, it is clear that these actions have attenuated the left's ability to offer a plausible agenda that has sufficient appeal to contain, or at least to slow down, the push to the right.

Progressive reform in the 1980's and beyond must confront the reality that progressive idealogical impotence has helped to create a fertile soil in which conservative agenda have flourished. In turn, this demands that progressives think seriously about what ideology or correctional philosophy can gain sufficient support to permit the opportunity for reform to emerge and be realized. Below, I argue that rehabilitation is the most feasible ideology available and, thus, that it should be reaffirmed rather than be rejected. This discussion sets the context for the recommendation of a specific reform proposal: the privatization of treatment in prisons.

The Tenacity of Rehabilitation

In light of the repeated attacks on correctional treatment not only by conservatives but also from those who previously would have been its staunchest defenders, it is not surprising that there is much talk of the "decline of the rehabilitative ideal" (Allen, 1981) and much questioning about whether "rehabilitation is dead" (Halleck and Witte, 1977; Serrill, 1975; cf. Cullen, Cullen, and Wozniak, 1985; Cullen, Golden, and Cullen, 1983). Yet contrary to the prevailing wisdom in the field, empirical data indicate that treatment is alive and well as a correctional ideology. The requiem for rehabilitation should not yet be sung.

To be sure, changes have occurred and should not be dismissed lightly. There was a time when the dominance of rehabilitation as the ideal correctional philosophy was not in dispute. In the 1960's, Menninger's *Crime of Punishment* could become a celebrated title, and Toby (1964:332) could comment that textbooks conveyed the message that "punishment is a vestigal carryover of a barbaric past and will disappear as humanitarianism and rationality spread." And a 1968 Harris poll reported that nearly three-fourths of all Americans felt that "rehabilitation should be the purpose of prisons." By the 1980's, however, the attacks on rehabilitation had taken a toll. A replication in 1982 of the earlier Harris survey revealed that support for treatment as the primary goal of incarceration had slipped to 44 percent (Flanagan and Caulfield, 1984:42). Moreover, other attitudinal shifts buttressed anti-treatment sentiments. As Flanagan (1984) has observed, during the last decade the public's tendency to see crime predominantly as a social pheonomenon caused by disorganized family and community life has diminished, while their tendency to blame high crime rates on lenient sentences which make lawlessness profitable has intensified. That is, popular explanations or theories of crime are increasingly providing the logic for punitive policies: we need to get tough with offenders so that crime does not pay (Cullen, Clark, Cullen, and Mathers, 1985).

But this line of reasoning should not be carried too far. By focusing on the losses rehabilitation has suffered, there is the risk of missing the degree to which it remains a legitimate and vital perspective among both the public and criminal justice participants. Indeed, in the face of considerable adversity, the rehabilitative ideal has displayed an amazing tenacity.

A growing number of empirical studies lend credence to this contention. Despite some erosion of support, national surveys still indicate that it is a myth that the public is now exclusively punitive in its approach to corrections. The Harris polls cited above reported that advocacy of rehabilitation as the purpose of imprisonment fell from a high of 72 percent in 1968 to 44 percent in 1982. However, this 44 percent figure remained higher than that accorded "punishment" (19 percent) or "protect society" (32 percent); 5 percent answered "not sure." Similarly, a 1971 Associated Press-NBC poll indicated that rehabilitation was favored by 37 percent versus 31 percent for punishment and 25 percent for protect society (7 percent answered not sure). And a 1982 Gallup poll which pitted rehabilitation against punishment found that 59 percent felt that it was more important to "get men in prison started on the right road" while only 30 percent agreed that it was "more important to punish them for their crimes" (11 percent not sure) (Cullen, Cullen, and Wozniak, 1985).

Data from state and community studies reinforce the general pattern indicated by the national polls. On the one hand, this research suggests no willingness on the part of the public to be soft on crime. Citizens believe that offenders deserve to be punished and that imprisonment is an effective deterrent and incapacitative strategy. On the other hand, however, the research is equally clear in showing that the public has not lost faith in rehabilitation. Treatment is defined as a desirable goal of corrections and is viewed as having the capacity to reduce an offender's criminogenic tendencies. Unlike many progressive academics, a majority of citizens (a) believe that a system which punishes *and rehabilitates* is preferable to one which only seeks to punish and (b) still have a measure of optimism that efforts to help offenders, particularly younger ones, can work (Austin, 1982; Cullen, Clark, and Wozniak, 1985; Cullen, Cullen, and Wozniak, 1985; Cullen, Golden, and Cullen, 1983; Gottfredson and Taylor, 1980; Thomson and Regona, 1984; Warr and Stafford, 1984:102).

Notably, available data suggest that support for rehabilitation is holding firm among criminal justice policy-makers. While legislators and other state elites are prone to overestimate the punitiveness of the public, their own attitudes are surprisingly reformist and favorable to treatment (Berk and Rossi, 1977; Cullen, Bynum, Garrett, and Greene, 1985; Cullen, Gilbert, and Cullen, 1983; Gottfredson and Taylor, 1983; Riley and Rose, 1980). As Gottredson and Taylor (1983:14) reported in their study conducted in Maryland, "the attitudes of both the public and the policy group can be characterized as rather liberal, non-punitive, utilitarian, and reform-oriented."

Research on those within the field of corrections reaches a similar conclusion. While empirical data are limited, existing evidence indicates that correctional administrators have yet to fully abandon the goal of offender treatment (Cullen and Gilbert, 1982:259; Cullen, Golden, and Cullen, 1983; Serrill, 1975). There is also a growing body of literature showing that correctional officers not only endorse punishment and custody as central goals of imprisonment but also manifest a healthy support for rehabilitation (Cullen, Gilbert, and Cullen, 1983; Jacobs, 1978:192; Toch and Klofas, 1982; Shamir and Drory, 1981). Finally, while prison inmates dislike the uncertainty of indeterminate sentences (Goodstein and Hepburn, 1985:174), they reject the idea that rehabilitation programs do not work (Cullen, Gilbert, and Cullen, 1983:6-7), and they strongly advocate the provision of "services that facilitate self-advancement and self-improvement" (Toch, 1977:4; cf. Erez, 1984). It is equally instructive that lists of demands presented during inmate disturbances invariably include calls for increasing rather than dismantling rehabilitative programs (Hawkins, 1976:77).

In short, the empirical evidence is persuasive in suggesting that treating offenders remains a popular, if somewhat tarnished, correctional philosophy. This finding forces the question of what alternative, progressive justification for reform can match the rehabilitative ideal's ongoing legitimacy and toughness in the face of attack. At first glance, "doing justice" seems a likely candidate. After all, most Americans believe in equality before the law and buy the idea that punishments should be roughly commensurate with the seriousness of the crime committed. But the fallacy for progressives here is to assume that citizens see doing justice as a way of limiting state intervention and blunting the harm done to offenders. Survey data indicate the opposite. Thus, the public believes that offenders enjoy too many rights, that the sentences meted out by the nation's courts are too lenient, and that prison conditions are not sufficiently harsh (*Public Opinion,* 1982:36; *St. Louis Globe-Democrat,* 1981). Doing justice, then, are code words that trigger thoughts of restricting rights that allow the guilty to go free, mandating longer prison terms so that serious crimes will get the punishment that is due, and making sure that evil offenders are not rewarded with an easy life within the society of captives. This, of course, is hardly a prescription for progressive reform.

Another rationale for reform is to assert that abuses in the correctional system should be eradicated because it is the right thing to do. In cases of obvious neglect and excessive coercion, particularly those that earn media attention, this appeal can be potent. Yet on an everyday basis and as a guiding philosophy of corrections, it is doubtful that "humanity for humanity's sake" could be sustained. While citizens may be moved by disquieting, extreme cases of injustice, their charity extends only so far. "After all," the argument goes, "how humane were criminals to the people they robbed, raped, and murdered?" Moreover, being humane promises no tangible payoff. By contrast, rehabilitation has a utilitarian side: the bargain in treating offenders decently is that this will make them less criminogenic (Cressey, 1982:xxii-xxiii).

In the last analysis, there is always the stance that true criminal justice reform is contingent on achieving wider social justice. However true this observation may ultimately prove to be, it does not address the interim question of what specifically should be done now to effect change within the correctional system. Further, a concern for achieving wider social justice is not inconsistent with support for treatment. Indeed, the positivist origins of the rehabilitative ideal demand a thorough causal analysis of why offenders violate the law. Since behavior is seen as emanating from a context, the chances are that the structural sources of illegality will be illuminated. Alternatively, a justice model which proposes to process everyone equally regardless of their unequal social backgrounds risks reinforcing the fiction that criminal activity is merely a matter of individual choice and in turn risks deflecting attention from the root causes of such behavior.

One caveat should be noted here. In arguing that rehabilitation remains a viable correctional perspective, it must be understood that the survey data cited indicate support for a general ideology and not necessarily for specific policy proposals. It is problematic, for instance, whether the level of backing accorded treatment would be maintained if citizens were asked to increase taxes to improve programs or if they were asked whether dangerous offenders, once "cured" by prison therapists, should be released into their communities. This insight leads to two further observations.

First, the value of rehabilitation—at least as it is conceived here—is that it provides a vocabulary, a way of talking about crime and its correction, that remains legitimate and understandable to people. As such, it can supply progressives with a credible language in which to present a reform and keep them from being easily dismissed. Second, simply because a policy proposal is couched in rehabilitative terms does not, of course, insure its acceptance. The successful implementation of any reform depends on the extent to which it addresses prevailing political and bureaucratic realities.

In sum, reaffirming rehabilitation as a correctional ideology is not being offered as a panacea. However, I have tried to demonstrate that it has advantages over other options available to progressives and that it retains sufficient support among the public and criminal justice participants so that it can be used to justify correctional reform. The challenge for progressives is to specify proposals that draw on the legitimacy that now inheres in the rehabilitative ideal while at the same time being sensitive, as noted above, to how existing sociopolitical circumstances preclude certain avenues of reform but not others. In this light, the section below presents one possible strategy for criminal justice reform in the 1980's and beyond: the privatization of prison treatment programs.

Privatization in Corrections: Opportunity for Reform?

As Spitzer and Scull (1977:283) have noted, social control over the past century has been "increasingly organized and carried out as a public effort—coordinated, financed, and implemented by the state." Yet the growth of governmental surveillance and supervision of criminal populations has not meant that privately financed control systems have been fully eliminated or that new forms of private justice have not emerged and flourished (Henry, 1983; Shearing and Stenning, 1981). Indeed, in light of recent attempts to intensify social control measures despite diminishing fiscal resources, talk of relying on the private sector to help resolve this crisis is now becoming especially ubiquitous.

In the area of corrections, the private sector already provides a number of services, and a variety of recommendations for expanding this involvement has been made (Lindquist, 1980). Today, however, the most controversial and frequent proposal is to privatize prisons; that is, to allow business to build and manage facilities in hopes of turning a profit. Under the best of circumstances, everybody wins. The state is permitted to expand its control system at no cost, and corporations are allowed into a new and potentially lucrative market. The attractiveness of this exchange is such that politicians across the nation are entertaining proposals. As a recent *Chicago Tribune* front-page headline read, "Prisons-for-Profit Trend Breaking Out" (Wiedrich and Rowley, 1985:1). Moreover, the executive director of the American Correctional Association has gone on record in support of the idea. "We ought," Anthony Travisono commented, "to give business a try" (Mullen, 1984:1).

The current discussion regarding the involvement of the private sector in corrections is an occurrence that should not escape the attention of progressives. To be sure, the initial reaction of most on the left is one of suspicion, pessimism, and opposition. Michael Walzer of *The New Republic* (1985:10) captured this response in his article titled, "At McPrison and Burglar King, It's. . . Hold the Justice" (cf. *Institutions Etc.,* 1984). While not disputing that privatization bears close scrutiny—after all, the pursuit of profits is not often consistent with the pursuit of doing good for others—it would be a mistake, I believe, to dismiss privatization out of hand. Instead, it is important to assess how this movement may create the opportunity for correctional reform. In particular, privatization offers a potent rationale for having policymakers rethink current practices and consider new and more effective ways of managing prisons.

Lacking a fair range of tests, it is difficult to know whether the private sector would run more or less humane institutions. Nonetheless, there are a number of factors which make the state's relinquishing of its *custodial* function—housing and watching inmates—to private interests both unlikely and, from a progressive standpoint, troublesome (cf. Mullen, 1984; *Criminal Justice Newsletter,* 1985:5). One set of problems surrounds the enforcement of institutional security and discipline. For instance, would corporations be given the right to conduct searches, revoke good time, place disruptive offenders in solitary confinement, and invoke deadly force during prison breaks? Further, if offenders did escape, who would be accountable? And if there was an abuse of authority in seeking to effect control, who would be legally liable?

Another concern is what would occur if a corporation had cost overruns or went bankrupt. Or, if a business was running low on funds, would the executives be tempted to cut back the workforce to unacceptable levels or to depress wages and hire poor quality staff? And how would they provide inmates with adequate living conditions when profits dwindled?

Lastly, the political opposition to handing over prisons to corporations is likely to be intense. The correctional bureauracy will fight the deep infringement on its control, and it is likely to find enough support among political allies to make widescale privatization difficult.

Thus, there are a variety of hard questions to be answered and political barriers to be overcome before private interests will be granted the right to fulfill the custodial function now performed by the state. However, housing, feeding, and supervising inmates is only part of the traditional role played by the state; there is also the matter of rehabilitation. What remains to be considered, therefore, is the extent to which the *treatment as opposed to the custodial* function is amenable to privatization. That is, should progressives support the privatization of correctional treatment as an avenue of progressive reform? Below, I first outline a proposal for such reform and then consider the benefits and dangers of pursuing this agenda.

A Proposal

My proposal for the privatization of treatment involves five broad components. The phrasing should be as follows.

First, rehabilitation is a legitimate function of imprisonment and one which continues to win widespread support among citizens. The goal is to see that offender treatment should be done as effectively as possible.

Second, the private sector can often accomplish tasks more effectively than the public sector. This is one reason why current consideration is being given to the privatization issue in the field of corrections. Consequently, it makes sense to explore whether private vendors could run rehabilitation programs more effectively than they are now run.

Third, such vendors would be paid to provide either a broad range of services or a specific service. This could involve psychological counseling, educational programs, work-related training, and/or prison industries.[1]

Fourth, and most importantly, the contract with private vendors should specify performance or outcome standards. As in the private sector, the amount of payment and contract renewal should be contingent on satisfactory levels of service delivery. Measuring program effectiveness involves applying criteria such as the percentage of inmate participation in programs, the degree of success in post-release job placement, and/or recidivism rates.

Fifth, since the real cost saving from treatment programs is linked to their ability to return offenders to society so that they occupy productive rather than criminal roles, privatizing treatment programs should not be seen as a way of substantially cutting treatment budgets. Instead, existing levels of budgetary support should be maintained and the effectiveness of private versus current programs evaluated. Private treatment programs should be made more effective using existing levels of funding.

Benefits and Dangers of Privatizing Prison Treatment

Benefits

There are at least five reasons why privately run treatment programs would potentially serve as a progressively oriented prison reform—that is, as a strategy that tends to humanize the prison environment and foster opportunities for inmate growth.

First, the most frequent criticism of prison rehabilitation is that it invariably is corrupted by custodial and control considerations (Rothman, 1980). Breaking the treatment-custody link is thus a critical challenge for those favoring correctional rehabilitation. One of the hidden benefits of privatization of treatment—given that profits are tied to effectiveness—is that it introduces a set of people who have strong incentives to make rehabilitation work and much weaker incentives to fulfill custodial ends. To be sure, private vendors would have to reach an accommodation with the custodial staff; otherwise they could be rendered ineffectual. However, since their profits and livelihood would be contingent on program performance, they could not afford to allow the integrity of their programs to suffer corruption. As such, the structure of interests within the prison would be tilted away from control and more toward treatment (cf. Greenberg, 1973:215).

Second, apart from institutions that undertake evaluation studies and use results to allocate resources, there is little accountability when prison rehabilitation programs fail. It is always easier to blame a lack of success on intractable inmates than on a lack of program integrity. By contrast, a system that links payment or contract renewal to the quality and effectiveness of the services provided assumes that private vendors are accountable if treatment interventions fail (cf. Jeffrey, 1978:166). Further, this approach conveys an expectation that prison rehabilitation should be effective and thus fights the dual images that "nothing works" in corrections and that offenders are incapable of personal growth.

Third, the infusion of private interests into the prison environment creates the potential that new ideas and approaches to offender therapy will be forthcoming. With profits on the line, vendors will have clear incentives to develop more effective treatment modalities. One possible outcome is that companies will sponsor sustained academic research on rehabilitation. This will be a refreshing change to current trends in which government monies are frequently allocated to studying crime control measures such as selective incapacitation and deterrence.

Fourth, the introduction of business into the realm of rehabilitation also may enhance the political viability of correctional treatment. In budgetary debates, it gives the rehabilitation camp a potentially powerful lobby that can lend legitimacy to the idea that treatment works and deserves greater financial support. It also fosters the possibility of an alliance between progressives concerned with the expansion of services for inmates and more conservative business interests who stand to profit from such a "reform" movement.

Finally, our prisons exist within a capitalist society. Those on the left often cite this fact as the reason why true humanity in prisons cannot be achieved. However accurate this observation may be, it should not blind progressives to the reality that reforms have little chance of making things better if they are incompatible with capitalist thinking and interests. As Shadish (1984:715) has warned, "policies are implemented to the extent that they are consistent with extant social structures and ideologies." In this light, the proposal to privatize treatment would seem to have real chances of being implemented and of working. It taps the capitalist notion that private enterprise can deal effectively with any problem, and it offers businesses the chance to make money. As such, it is a reform which "makes sense" in capitalistic terms and relies on concrete incentives rather than on good intentions to motivate its implementation. Most importantly, however, privatization accomplishes something that only infrequently occurs within American corrections today: it begins to structure potentially powerful interests in favor of the idea that offenders are reformable and that the prison environment should be oriented toward this task. Under these circumstances, chances of reducing custodial influences and of improving the quality and effectiveness of rehabilitative services seem realistic.

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[1] A number of authors have suggested that treatment programs operate on a "voucher system" (Greenberg, 1973; cf. Lindquist, 1980:63). This involves furnishing inmates with a certain number of vouchers with which they can purchase private rehabilitative services. While this has the advantages of privatizing treatment and allowing offenders to determine what programs they wish to contract, the major disadvantage is that it depends on the willingness of correctional officials to sacrifice control over both the programs that are implemented and the rate of inmate participation. Officials are thus likely to oppose a voucher system because it would be a potential administrative headache and a perceived threat to order. By contrast, the proposed system would give officials the power to regulate the length and type of services contracted with private vendors. This control, I suspect, would lessen their resistance to privatizing treatment. In sum, while I have no opposition in principle to a voucher system, it does not seem to be as politically feasible as the reform suggested here.

Dangers

In light of the uneven history of past reforms (c.f. Rothman, 1980, with Eriksson, 1976), few progressives can be unaware that good intentions do not always have the desired results. In recommending reforms, it becomes difficult not to have doubts creep in and make one pause before proceeding. This caution is healthy in the sense that it demands the dangers of a proposal be weighed. However, as mentioned previously, if the doubt becomes too great, it fosters a pessimism that can lead to a paralysis in policy matters that does not burden those of a different ideology who are fully prepared to offer the solution to the problem of crime.

With these thoughts in mind, I try to identify what I believe are the major obstacles to the successful implementation of the privatization of prison treatment. While there are no easy prescriptions for overcoming these potential difficulties, awareness of their potential effects and conscious efforts to build in safeguards can protect the integrity of the reform.

First, resistance to privatizing treatment understandably will come from existing correctional employees (Lindquist, 1980:58). There are two possible ways to protect workers while simultaneously creating opportunities for privatization to take hold. One would involve limiting privatized treatment to new facilities. Another would be allowing private vendors to supply only rehabilitative services in addition to those currently being offered. For instance, vendors could be allowed to start prison industry programs that train inmates in work skills, pay salaries at near the going market rate, and possibly guarantee employment upon release (cf. Cullen and Travis, 1984).

Second, some measure of resistance can be expected from correctional officers who see outsiders as eroding their influence and threatening security. To an extent, this conflict is a price that will have to be paid if treatment is to earn equal footing with custodial goals. However, three suggestions for mitigating resistance and facilitating accommodation can be made. One involves hiring a respected correctional figure (former guard?) to serve as an ombudsman for officer complaints about the program being implemented. A second is to attempt to actively involve the officers in the correctional process. They should be viewed as resources that have the potential to enhance treatment effectiveness (Lombardo, 1982, 1985). Stereotyping officers as exclusively punitive and ignoring their positive sentiments about rehabilitation (Cullen, Gilbert, and Cullen, 1983; Jacobs, 1978) would be an erroneous approach. Lastly, it would be possible to create a limited number of positions in the private correctional firm into which existing members of the guard force who evidence a talent for human services work could move. By offering a genuine opportunity for career advancement, a degree of necessary co-optation may be achieved.

Third, if privately financed treatment programs were to prove ineffective, there is the danger that rehabilitation would be further discredited and inmate services cut. While this risk is real, three circumstances would seem to check how far the attack on treatment could extend. To begin with, the strength of rehabilitative ideology, as argued earlier, must not be dismissed. Rehabilitation has withstood repeated attacks and is likely to weather others. Second, rehabilitaton programs are functional for prison order. They provide hope and reduce idleness. Correctional officials do not want the difficult job of running warehouses. As such, they would oppose the elimination of services. Finally, it is likely that private treatment initially would be implemented on a limited basis. If it proved unsuccessful, the damage to the idea of rehabilitation would be equally limited.

Fourth, there is also the danger that the push for profits could result in a decline in the quality of services now provided to offenders. The protection against this occurring is that profits must be linked to program effectiveness. This insures accountability and incentives for vendors to implement services of sufficient quality so that acceptable results will be achieved. Progressives should oppose privatization if profits are not contingent upon levels of performance.

Fifth, there is a risk that the push for success and profits will be so great that vendors will employ coercion or unethical therapies (e.g., extensive prescription of drugs). One way to guard against this is to have contracts stipulate the powers of the vendors and the range of appropriate treatment modalities. Another potential protection against abusive practices is the fear of lawsuits from inmates.

And finally, there is the danger that states will turn to private vendors not to enhance the quality of treatment services but to supply such services more cheaply. It is critical, therefore, that privatization should be sold not as a money-saver (as progressives do with community corrections) but on the basis of effectiveness. The position should be that the investment in rehabilitation, by its very nature, is long-term; it is better to pay now than to pay later. A reasonable compromise might be that private vendors supply services within the same budget normally accorded to rehabilitative services, with perhaps some sliding scale of profits tied to success levels. The test, then, would be to see if they can do the job more effectively than it is now done. Another way of constraining the tendency to save money is to impose minimum standards for wages and qualifications for treatment personnel (e.g., psychologists, educators). Finally, it should be realized that some programs—such as privately financed prison industries—would not fall prey to the problem of decreased services because they typically are add-ons to existing services and because they promise to extend new economic opportunities to inmates (Cullen and Travis, 1984).

Choosing the Future: Entering the Marketplace of Ideas

Sherman and Hawkins (1981) have offered two useful observations regarding correctional policy. First, they argue that the future of corrections can be chosen. Too often, it is assumed that prevailing pressures and structural circumstances fully constrain policy decisions and leave no room for shaping the direction corrections takes. Second, based on historical analysis, they emphasize that ideology—what people think is possible and should be done in corrections—has clearly influenced the course policy has followed. In their words (1981:73), "It may be that the 'power of doctrine over reality,' which some determinists have dismissed as 'imaginary,' is not present or not easy to discern in many fields of human activity. But in the sphere of penal practice it is clearly manifest."

To the extent that Sherman and Hawkins are correct, they present a challenge for progressives to confront: Correctional policy in the 1980's and beyond can be chosen, and what progressives have to say can make a difference. In a sense, the challenge is for progressives to enter the marketplace of ideas and to compete to influence future policy choices. As argued, over the past decade, conservatives have achieved a near monopoly in this "marketplace." They appear confident and propose what seem to be realistic policies for addressing the crime problem.

The immediate tasks for progressives, then, is to formulate a product that can compete with that offered by conservatives. I have argued that this could best be accomplished by combining two ideological resources to specify an agenda that is humanistic in orientation and capable of being implemented. First, on a broad level, rehabilitation should be reaffirmed as a progressive approach to corrections. It has the merits of earning widespread support among the public and criminal justice officials, and it is the only philosophy that directly rejects and does not lend legitimacy to punitive thinking about crime. Second, it may be opportune for progressives to capitalize on the current privatization trend and to explore ways in which this movement can be used to help humanize prison environments. In particular, I have suggested that progressives consider linking rehabilitation to the ideology of private enterprise and weigh the potential benefits of the privatization of prison treatment programs.

REFERENCES

Allen, F. A.(1981) *The Decline of the Rehabilitative Ideal: Penal Policy and Social Purpose*. New Haven: Yale University Press.

Austin, J. (1982) "The public mandate against the high cost of prisons." Paper presented at the annual meeting of the Western Society of Criminology.

Bayer, R. (1981) "Crime, punishment, and the decline of liberal optimism." *Crime and Delinquency* 27:169-190.

Berk, R. A and P. H. Rossi (1977) *Prison Reform and State Elites*. Cambridge, Massachusetts: Ballinger.

Binder, A. and G. Geis (1984) "*Ad populum* argumentation in criminology: Juvenile diversion as rhetoric." *Crime and Delinquency* 30:309-333.

Clarke, S. H. (1974) "Getting 'em out of circulation: Does incarceration of juvenile offenders reduce crime?" *Journal of Criminal Law and Criminology* 65:528-535.

Cohen, J. (1983) "Incapacitating criminals: Recent research findings." *NIJ Research in Brief*. Washington, DC: U.S. Department of Justice.

Cressey, D. R. (1982) "Foreword." Pp. xi-xxiii in F. T. Cullen and K. E. Gilbert, *Reaffirming Rehabilitation*. Cincinnati: Anderson.

Criminal Justice Newsletter (1985) "High costs stir critics of privately operated jail." 16 (June 17):5.

Cullen, F. T., T. S. Bynum, K. M. Garrett, and J. R. Greene (1985) "Legislative ideology and criminal justice policy: Implications from Illinois." Pp. 57-76 in E. Fairchild and V. Webb (eds.), *The Politics of Crime and Criminal Justice*. Beverly Hills: Sage.

Cullen, F. T., G. A. Clark, J. B. Cullen, and R. A. Mathers (1985) "Attribution, salience, and attitudes toward criminal sanctioning." *Criminal Justice and Behavior* 12 (September).

Cullen, F. T., G. A. Clark, and J. F. Wozniak (1985) "Explaining the get tough movement: Can the public be blamed?" *Federal Probation* (June).

Cullen, F. T., J. B. Cullen and J. F. Wozniak (1985) "Is rehabilitation dead? The myth of the punitive public." Paper presented at the annual meeting of the Society for the Study of Social Problems.

Cullen, F. T. and K. E. Gilbert (1982) *Reaffirming Rehabilitation*. Cincinnati: Anderson.

Cullen, F. T., K. E. Gilbert, and J. B. Cullen (1983) "Implementing determinate sentencing in Illinois: Conscience and convenience." *Criminal Justice Review* 8:1-16.

Cullen, F. T., K. M. Golden, and J. B. Cullen (1983) "Is child saving dead? Attitudes toward juvenile rehabilitation in Illinois." *Journal of Criminal Justice* 11:1-13.

Cullen, F. T. and L. F. Travis III (1984) "Work as an avenue of prison reform." *New England Journal of Criminal and Civil Confinement* 10:45-64.

Cullen, F.T. and J. F. Wozniak(1982) "Fighting the appeal of repression" *Crime and Social Justice* 18:23-33.

Doleschal, E. (1982) "The dangers of criminal justice reform." *Criminal Justice Abstracts* 14:133-152.

Erez, E. (1984) "Random assignment—the least fair of them all: Prisoners' attitudes toward various criteria of selection." Paper presented at the annual meeting of the American Society of Criminology.

Eriksson, T. (1976) *The Reformers*. New York: Elsevier.

Flanagan, T. J. (1984) "Public perceptions of the causes of crime: A review and critique." Paper presented at the annual meeting of the American Society of Criminology.

Flanagan, T. J. and S. L. Caulfield (1984) Public opinion and prison policy: A review." *The Prison Journal* 64:31-46.

Fogel, D. (1979) *We Are the Living Proof: The Justice Model for Corrections*. Second edition. Cincinnati: Anderson.

Gaylin, W. and D. J. Rothman (1976) "Introduction." Pp. xxi-xli in A. von Hirsch, *Doing Justice: The Choice of Punishments*. New York: Hill and Wang.

Gendreau, P. (1981) "Treatment in corrections: Martinson was wrong!" *Canadian Psychology* 22:332-338.

Gendreau, P. and B. Ross (1979) "Effective correctional treatment: Bibliotherapy for cynics." *Crime and Delinquency* 25:463-489.

——— (1980) *Correctional Potency: Treatment and Deterrence on Trial*. Ontario: Ministry of Correctional Services.

Gottfredson, S. D. and R. B. Taylor (1983) *The Correctional Crisis: Prison Populations and Public Policy*. Washington, DC: U.S. Department of Justice.

Goodstein, L. and J. Hepburn (1985) *Determinate Sentencing and Imprisonment: A Failure of Reform*. Cincinnati: Anderson

Greenberg, D. J. (1973) "A voucher system for correction." *Crime and Delinquency* 19:212-217.

Greenberg, D. J. and D. Humphries (1980) "The co-optation of fixed sentencing reform." *Crime and Delinquency* 26:206-225.

Gross, B. (1982) "Some anticrime proposals for progressives." *The Nation* (February 6):137-140.

Halleck, S. L. and A. D. Witte (1977) "Is rehabilitation dead?" *Crime and Delinquency* 23:372-382.

Hawkins, G. (1976) *The Prison: Policy and Practice*. Chicago: University of Chicago Press.

Henry, S. (1983) *Private Justice: Towards Integrated Theorising in the Sociology of Law*. London: Routledge and Kegal Paul.

Institutions Etc. (1984) "Corrections and the land of opportunity." 7 (October):1-9.

Jacobs, J. (1978) "What prison guards think: A profile of the Illinois force." *Crime and Delinquency* 25:185-196.

Jeffrey, C. R. (1978) "Criminology as an interdisciplinary behavioral science." *Criminology* 16:149-169.

Kittrie, N. N. (1973) *The Right to Be Different: Deviance and Enforced Therapy*. Baltimore: Penguin Books.

Lindquist, C. A. (1980) "The private sector in corrections: Contracting probation services from community organizations." *Federal Probation* 44 (March):58-64.

Lombardo, L. X. (1982) "Alleviating inmate stress: Contributions from correctional officers." Pp. 285-297 in R. Johnson and H. Toch (eds.), *The Pains of Imprisonment*. Beverly Hills: Sage.

——— (1985) "Mental health work in prisons and jails: Inmate adjustment and indigenous correctional personnel." *Criminal Justice and Behavior* 12:17-27

Martinson, R. (1979) "New findings, new views: A note of caution regarding sentencing reform." *Hofstra Law Review* 7:243-258.

Menninger, K. (1968) *The Crime of Punishment*. New York: Penguin Books.

Mullen, J. (1984) "Corrections and the private sector." *NIJ Research in Brief*. Washington, DC: U.S. Department of Justice.

Murray, C. (1984) *Losing Ground: American Social Policy 1950-1980*. New York: Basic Books.

Palmer, T. (1983) "The 'effectiveness' issue today: An overview." *Federal Probation* 46:3-10.

——— (1984) "Treatment and the role of classification: A review of basics." *Crime and Delinquency* 30:245-267.

Paternoster, R. and T. Bynum (1982) "The justice model as ideology: A critical look at the impetus of sentencing reform." *Contemporary Crises* 6:7-24.

Public Opinion (1982) "Crime: The Public Gets Tough." 5 (October/November):36.

Riley, P. J. and V. M. Rose (1980) "Public and elite opinion concerning correctional reform: Implications for social policy." *Journal of Criminal Justice* 8:345-356.

Rothman, D. J. (1978) "The state as parent: Social policy in the progressive era." Pp. 67-96 in W. Gaylin, I. Glassner, S. Marcus, and D. Rothman, *Doing Good: The Limits of Benevolence*. New York: Pantheon.

——— (1980) *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America*. Boston: Little, Brown.

Saint Louis Globe-Democrat (1981) "Prisons too soft, most in poll say," (July 14).

Serrill, M. S. (1975) "Is rehabilitation dead?" *Corrections Magazine* 1:3-12, 21-32.

Shadish, Jr., W. R. (1984) "Policy research: Lessons from the implementation of deinstitutionalization." *American Psychologist* 39:725-738.

Shamir, B. and A. Drory (1981) "Some correlates of prison guards' beliefs." *Criminal Justice and Behavior* 8:233-249.

Shearing, C. D and P. C. Stenning (1981) "Modern private security: Its growth and implications." Pp. 193-245 in M. Tonry and N. Morris (eds.), *Crime and Justice: An Annual Review of Research*. Chicago: University of Chicago Press.

Sherman, M. and G. Hawkins (1981) *Imprisonment in America: Choosing the Future*. Chicago: University of Chicago Press.

Sieber, S. D. (1981) *Fatal Remedies: The Ironies of Social Intervention*. New York: Plenum.

Spitzer, S. and A. T. Scull (1977) "Social control in historical perspective: From private to public responses to crime." Pp. 265-286 in D. F. Greenberg (ed.), *Corrections and Punishment*. Beverly Hills: Sage.

Thomson, D. and A. J. Ragona (1984) "Fiscal crisis, punitive content, and public perceptions of criminal sanctions." Paper presented at the annual meeting of the Academy of Criminal Justice Sciences.

Toby, J. (1964) "Is punishment necessary?" *Journal of Criminal Law, Criminology, and Police Science* 55:332-337.

Toch, H. (1977) *Living in Prison: The Ecology of Survival*. New York: The Free Press.

Toch, H. and J. Klofas (1982) "Alienation and desire for job enrichment among correction officers." *Federal Probation* 46:35-44.

Travis III, L. F. and F. T. Cullen (1984) "Radical nonintervention: The myth of doing no harm." *Federal Probation* 48:29-32.

van Dine, S., J. P. Conrad, and S. Dinitz (1979) "The incapacitation of the chronic thug." *Journal of Criminal Law and Criminology* 70:125-135.

von Hirsch, A. (1976) *Doing Justice: The Choice of Punishments*. New York: Hill and Wang.

Walzer, M. (1985) "At McPrison and Burglar King, it's hold the justice." *The New Republic* (April 8):10-12.

Warr, M. and M. Stafford (1984) "Public goals of punishment and support for the death penalty." Journal of Research in Crime and Delinquency 21:95-111.

Wiedrich, B. and S. Rowley (1985) "Prisons-for-profit trend breaking out." *Chicago Tribune* (May 19):1, 18.

Wilson, J. Q. (1975) *Thinking About Crime*. New York: Vintage Books.

A Theoretical Examination of Home Incarceration

BY RICHARD A. BALL AND J. ROBERT LILLY*

THE DEVELOPMENT of alternatives to traditional sentencing policy has become a major movement in criminal justice. As we have indicated elsewhere (Ball and Lilly, 1983a, 1983b, 1984, forthcoming), one of the most recent of these developments involves the use of home incarceration through some form of restriction of the offender to his or her residence during specified periods of time. Although some manner of home detention has been employed informally, more and more jurisdictions are formalizing the practice, partly in an effort to save money, partly to avoid the more adverse repercussions of jailing, and partly to insure consideration of due process in a heretofore shady legal area. We have been studying the phenomenon for approximately 3 years, during which time official home incarceration policies have come into practice in California, Florida, Illinois, New Mexico, New York, Oklahoma, and Utah. Although the practice is variously termed "house arrest," "home detention," "home confinement," or "domicile restriction," it has in common the fact that the offender is restricted to the home as a means of detention or punishment.

To this point we have outlined home incarceration in terms of the international scene (Ball and Lilly, 1983a, 1984) and have examined its applicability to certain specific offenses such as drunken driving (Ball and Lilly, 1983b, 1984). But now developments are proceeding so dramatically that it is necessary to pause and to consider what is happening in greater depth. An "alternative," of course, can be a new means to an old objective or an alternative goal in itself. Too often latent assumptions go unstated and therefore unexamined. Any argument for or against the development of an "alternative" should make explicit its theoretical grounds (Heijder, 1980). Given that we have already outlined the practical advantages and disadvantages of home incarceration, our intention here is to take the emerging debate a bit further, not necessarily as advocates but as students of the issue who wish to see all sides considered as fully as possible. To that end we will outline our own theoretical position and then examine home incarceration in those terms. That is not to say that we consider other positions invalid but only to make a beginning.

Theoretical Considerations

Criminological theory has long been divided into two distinct realms, the so-called "classical" and "positive" schools. The former is characterized by a stress upon rationality, as exemplified by notions of the importance of clarity, parsimony, balance, and restraint. Despite its many virtues, it can be most "unrealistic" in its tendency to place principles before people. The latter is characterized by a stress upon theoretical determinism and an emphasis upon "facts" rather than "metaphysics" (basic assumptions or issues of logic). Unfortunately, it is sometimes inclined to advocate whatever criminal justice policy that "works," with little regard for the more subtle questions of justice. As one of the authors has suggested in an earlier work critiquing these approaches, what is badly needed is a "dialectical" criminology which can overcome these problems (Ball, 1978). Such a position would consider the way in which perceptions of appropriate punishment change over time in such a way that those deemed reasonable under one set of social conditions dominated by one manner of social consciousness may be considered very unjust only a few years later. A dialectical theory of sentencing, for example, would pay considerable attention to perspectives gained from studies in the sociology of knowledge.

Taking this argument one step further in more recent work (Ball, 1979), it has been suggested that the three traditional goals of offender punishment, retribution, utility, and reformation, be reconsidered in terms of a paradigm devoted to a concept of "restricted reprobation" of the criminal act in the service of the "reparation of social reality" as that particular reality exists at a given period. Retribution, whether aimed at retaliation or expiation, must be incorporated as one aspect of this approach, but it must not be allowed to dominate. Retribution involves the notion of not only a right but a duty to punish offenders. On the other hand, the concept of justice as developed in the doctrine of retribution insists that only the guilty be punished and that the punishment be fitting to the offense. That is, the denunciation or reprobation of the offender is considered a moral necessity but is also subjected to certain inherent restrictions in accordance with the reigning concept of justice.

The doctrine of utility, whether aimed primarily at incapacitation or deterrence, represented an attempt to apply a purely rational theory of punishment, and it had a major impact upon sentencing policies, including "alternative" sentences. Unfortunately, the utilitarian goal was essentially negative in its approach and avoided issues of morality while stressing expedience. Nevertheless, it did represent an advance in the sense that sentencing policy was examined in terms of reason and logic while excessive moralism was somewhat curbed. It aimed essentially at the protection of the community rather than either retribution or reformation of the offender. Reprobation was a means.

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The doctrine of reformation also had its two different emphases, one being the mitigation of the more harsh and brutal punishments and the other the idea of positive "rehabilitation" of the offender as a basic goal. This too has had its effect upon sentencing policies. Unfortunately, one result has been to tear the offender out of the community and turn him or her over to technical "experts" whose ostensible role is to "help" the offender. This not only separates the offender from the community, often leading to more lengthy sentences so that the "help" may be extended, but it has often outraged public sentiment, which demands that the offender "pay" for the offense instead of being "coddled" by the state. The community demands symbolic denunciation of the offense and has grave doubts about the possibility of reformation.

In formulating sentencing policy, society is faced with two fundamental problems. The first problem is how to sustain the collective definitions of social reality which allow common interpretations and shared expectations. The second problem is how to provide sufficient flexibility so that social reality can be continually constructed and reconstructed as conditions change. This two-sided process involves the *reparation of social reality*. Thus, the basic functions of sentencing are *symbolic* functions. "Punishment is a conventional device for the expression of attitudes of resentment and indignation, and of judgments of disapproval and reprobation, either on the part of the punishing authority himself or of those 'in whose name' the punishment is inflicted" (Feinberg, 1965: 399). On the one hand, there must be symbolic reprobation. On the other, this reprobation must be restricted by conceptions of justice as developed in the more advanced doctrines of retribution.

The notion of sentencing policy as directed toward the restricted reprobation of offenders in the interest of the reparation of social reality also incorporates the doctrine of utility, but it recognizes that society is not held together by bonds of logic which can be managed according to pure reason but by symbolic ties. Thus, the most "utilitarian" sentence may be one which does not seem very logical but which does carry enormous symbolic force. At the same time, the reparation of social reality must attend to the issue of reformation. The key is to repair the breach between offender and society. If this is to be accomplished, the reprobation must occur in such a way as to encourage desired changes in the behavior of the offender and perhaps also in the approach of the community to such offenses.

Building upon the first two theoretical statements, we have stressed in our most recent attempt to advance the theoretical understanding of sentencing policies the special importance of shifting collective definitions of the key concept of *responsibility* (Lilly and Ball, 1982). Contemporary principles of justice require that there be some acceptable mode of singling out those who are to be punished from those who should not be punished, but at one time just to be *near* a crime was considered to be morally contaminating, and somehow implying certain responsibility while at another time merely to show that a particular person bore a *resemblance* to the actual offender (by way of characteristics such as tribal affiliation, race, religious affiliation, etc.) was enough to brand that person guilty (Fauconnet, 1975). The question of what specific individual was sanctioned remained relatively unimportant as long as the process was experienced as providing a satisfactory sense of reparation, as "settling" things. It was not until St. Augustine's (354-450 A.D.) development of the concept of *mens rea* based on Seneca's (5 B.C.-65 A.D.) earlier discussions of "evil mind" that the subjective element of *intent* became significant (Hall, 1960). Pror to this time *actus reus* was sufficient; it was enough to show that an act had violated conceptions of law. The question of who was to be offered, as it were, in a public expiatory sacrifice so as to heal the breach made in the dominant social reality was quite secondary. Sometimes almost anyone would do, and offenders often selected paid substitutes to undergo their scheduled punishment in a "stand-in" role (Fauconnet, 1975).

This would all be nothing more than ancient history were it not that the utilitarian doctrine still permits this sort of thing under the goal of deterrence. On strictly utilitarian grounds it may be deemed more important that *someone* be punished quickly as an "example" if there is the possibility of undertaking a long and likely fruitless search for that particular individual who actually committed the offense. The latter course is often seen as undermining that public respect for the law which is necessary for deterrence. That is one reason why our theoretical perspective insists upon close attention to the definition of responsibility as a means of restricting the scope of those available for public reprobation.

Home Incarceration as an Alternative

Considered in terms of the brief theoretical perspective outlined above, home incarceration seems to offer certain advantages over some other sentencing alternatives. One of the principal problems of such practices as suspended judgment, unconditional release, suspended sentence, or even standard probation is that they often fail to satisfy the public sense of justice. The tradition of retribution is very powerful, and the court which violates the prevalent sense of justice by going too lightly on the offender is likely to provoke public backlash. Indeed, the continued force of this sense of the symbolic necessity of some degree of retribution so as to restore the public "confidence" in the legal system and thereby to insure the adequate reparation of social reality can be clearly seen in the recent crusade against drunken driving. This has resulted in a proliferation of "slammer laws" designed to force offenders convicted of DUI (Driving Under the Influence) or DWI (Driving While Intoxicated) into jails. We have examined this problem elsewhere, suggesting that home incarceration may provide a more restricted form of social reprobation which will still guarantee the public protection against those who continue to endanger it (Ball and Lilly, 1984). Such an alternative may offer a possibility of providing the public with the necessary "symbolic value of an official finding of offender accountability" (Aaronson et al., 1972) wthout exacerbating the problem by jailing the offender (Galvin et al., 1977).

In the case of drunken driving, it is obvious that the sentencing practices have not been either effective enough or dramatic enough to reaffirm the norms and redraw the boundary between the offender and the "law-abiding" public. Social definitions had been blurred and moral indignation finally exploded in a burst of excessive retribution which interferes with utilitarian goals and contributes nothing to the rehabilitation of the offender. Home incarceration may provide a sense of appropriate retribution while at the same time serving the utilitarian goal of protecting the public. And it can easily be combined with "treatment" programs if necessary.

As indicated above, sentencing alternatives may be expected to follow shifts in social consciousness and changing perceptions of social reality. This may be seen in the case of home incarceration. In 1970, France introduced the new concept of *controle judiciare* as a form of pretrial detention involving a provision which employed home confinement as an alternative (Gerety, 1980). In 1975, Italy initiated *affidamento in provo ai servizio sociale* (trial custody), which we have described elsewhere as a form of parole to the home after a period of some 3 months incarceration in a penal institution (Ball and Lilly, 1983a). The brief institutional incarceration fits our theoretical paradigm in that it is perceived of as a shock treatment which can have great impact as a symbolic statement but in a restricted way which might avoid the negative effects of long-term incarceration in the typical prison. The shift is underway internationally. Prior to the advent of home incarceration (there termed "domicile restriction") in New York, the New York Division of Youth had established a Community Aide Program with volunteers among whose responsibilities it was to check periodically to insure that the youths under their supervision were remaining at home *(Removing Children From Jails,* 1980). At about the same time, an alternative called "home detention" came into use in Washington, D.C., again as a means of supervising juvenile offenders *(Removing Children From Jails,* 1980). This is not surprising in view of the fact that the home has long been considered the key to dealing with youth. Even institutions for youth are still often called "youth homes." The next step in the shifting definitions would extend the concept to adults.

Theoretical Rationale for Home Incarceration

Home incarceration may not have been acceptable some years ago when the nature of "social reality" was somewhat different. The movement toward alternative sentences, however, had contributed to a partial reconstruction of collective perceptions, as evidenced by the fact that the National Advisory Commission on Criminal Justice Standards and Goals for Corrections (1973) has taken the position advocating the least drastic alternative consistent with public safety. The Commission has also recognized the importance of a dialectical relationship between sentencing alternatives and changing conditions and public perceptions, albeit implicitly rather than by way of an explicit theoretical approach, in its analysis of characteristics making for the likelihood of actual adoption of a given sentencing alternative. These include communicability, complexity level, potential impact, reasonable cost, reversibility, divisibility, compatibility, and perceived relevance to organizational goals (National Advisory Commission on Criminal Justice Standards and Goals for Corrections, 1973). Although we have considered these criteria at some length elsewhere (Ball and Lilly, 1984), they are worth examining here in terms of the way in which they illustrate an example of the application of the theoretical considerations outlined above.

According to our theoretical perspective, a new alternative sentencing policy stands little likelihood of adoption unless it is reasonably *communicable* or understandable in terms of the conceptions of social reality dominant in any particular era. If it does not "make sense," it may appear outlandish or even incomprehensible. At one time in the United States, home incarceration might have been rejected on such grounds. When life was lived on farms of more than 100 acres and one went into the nearest town perhaps only once a month for supplies, what sense would it have made to "punish" an offender by restricting the individual to that farm? Assuming that another member of the family could go for the supplies, the impact would be rather mild unless home incarceration were to be extended to a year or more. And how would compliance have been monitored? The burden of traveling from the county seat from time to time to "check up" on the offender so as to insure that the sentence was being carried out would have been unacceptable. But today social realities are quite different, and it is possible to monitor compliance by telephone, electronic devices, or random visits which might take only a few minutes time away from other work. Under these conditions, home incarceration would seem to be a very understandable and easily communicated alternative sentence.

In terms of our theoretical perspective, we must ask a key question. Does home incarceration "make sense" in view of current conceptions of responsibility? As we have indicated, the concept of responsibility is central to the way in which changing perceptions of social reality affect legal systems. Considered in this light, it would seem that home incarceration might represent an especially suitable means of satisfying the need for "reparation" in many contemporary cases. At first glance, for example, a violation such as drunken driving seems to be a victimless activity. And for many years this was accepted as the reality of the situation. But recent years have seen an extension of notions of responsibility, especially with reference to issues of public order (Lilly and Ball, 1982). Hart (1968) has commented on this trend in terms of the concept of *role responsibility*. According to this conception, one assumes certain duties whenever one assumes a particular role. Assumption of the role of driver brings with it the obligation to perform the function safely, that is to say, responsibly. The most desirable symbolic sanction for failure to perform the role responsibly might be one or more steps leading toward possible loss of that role, perhaps along the lines of the "points systems" in use in many states which assign points in accordance with the seriousness of various traffic infractions with loss of drivers' licenses coming once a given number of points has been accumulated. But a number of studies have shown that this sanction is less than effective in that most offenders continue to drive even after license revocation. Some alternative has now become necessary.

It is interesting to note in this connection that youth who are punished by being confined to the home by their parents during normal socializing periods have for decades referred to being "grounded." This term originated among aircraft pilots who were punished for flying infractions by being forbidden to fly for a time. Home incarceration might be perceived as a form of "grounding" of offenders. It would appear to merit serious consideration in terms of our theoretical perspective in that it combines moral retribution of a restricted sort with practical deterrence and reformation pressure.

The example just given also illustrates the second problem facing any possible sentencing alternative, the issue of *complexity level*. Home incarceration would have been an impossibly complex sentence to administer under the social realities of only a few decades ago. Not only would monitoring have been a serious drawback, but there would have been great pressure upon the offender to violate the conditions of the sentence in order to pay bills, handle other personal matters, and seek some entertainment. Today it is simple enough to pay the bills by check through the mail, to handle most personal matters by telephone, and to be entertained within the confines of the home by way of radio, records, television, and a variety of other facilities. Home incarceration now encounters a much less complex set of problems than would have once been the case, and it is certainly a very different form of "punishment" than it would have been in former times.

The reasonableness of any alternative is also connected with its *potential impact*. Again, potential impact must be judged in terms of the prevalent definitions of social reality, especially the goals which are being sought at the particular time, whether these be primarily retributive, utilitarian, or reformative. In our earlier proposal that home incarceration be examined as a possible sentencing alternative for drunken drivers (Ball and Lilly, 1984), we called attention to the fact that under present conditions mere retribution is hardly a reasonable response and may be the most counterproductive policy possible. At the same time, the public has lost much of its former faith in the rehabilitative ideal and now refuses to accept a sentence to participate in an alcoholism education program as "appropriate." What has happened is that social reality has been redefined. In a pattern similar to that which led to the passage of the so-called "sexual psychopath" laws (Sutherland, 1950) a new myth of the "killer drunk" was constructed, dramatized, and accepted by the general public. Once this had occurred, much greater "reparation" was demanded than the traditional traffic fine. Close examination, however, reveals that what the public really seems to want is a simple utilitarian goal—protection from those who drive while intoxicated and so constitute a public danger no longer to be tolerated. Home incarceration, if properly administered, may be the best means of insuring that goal.

Judged in terms of our theory of punitive sanctions as representing restricted reprobation in the interest of the reparation of social reality, the potential impact of home incarceration as a sentencing alternative goes far beyond its capacity for the dialectical combination of the best features of the retribution, utility, and reformation doctrines in a new way. The successful reparation of social reality depends to a considerable extent upon the effectiveness of a particular sentence in affirming the *norm of reciprocity* by which social systems are tied together (Gouldner, 1960). "It is only reasonable that those who voluntarily comply with the rules be given assurance that they will not be assuming burdens which others are unprepared to assume" (Morris, 1968: 477). The significance of the norm of reciprocity lies in the way in which it undergirds collective definitions of social reality and implies the necessity of sanctions when the fundamental norm is breached. This is a major reason why the public has begun to demand harsher sanctions against offenses such as drunken driving. The driver who insists upon handling a motor vehicle while severely intoxicated is now perceived as someone who benefits from—but refuses to reciprocate— the restraint of other drivers who refuse to endanger him or her by such behavior. Thus, the moral indignation is great and demands stricter sanctioning. The obvious symbolic sanction is simply to deny access to motor vehicles for a specified time. But revocation of the driver's license, even if it could be enforced, deprives the offender of the opportunity to fulfill other duties toward the norm of reciprocity by interfering with the ability to get to work or school or to perform other duties of a "good citizen." Home incarceration, if *restricted* in a reasonable way to certain times of the day, could solve this problem in a way which fits the requirements of the theory.

The concept of restraint is particular to the sentencing theory we have outlined. The relatively free individual is a mainstay in contemporary definitions of desirable social reality, and punitive sanctions must make no greater restrictions upon individual liberty than are necessary. Hawkins (1944) has made this clear while at the same time pointing to the other side of the coin as manifested in Aquinas' argument that equity requires that a human being be deprived of the good against which he or she acts because the act implies some degree of rejection of that good. In this sense, sanctions consist essentially of the loss of some portion of individual self-determination. One of the most interesting things about home incarceration is that it offers the possibility of restricting self-determination in such a way as to avoid the harsher aspects of retribution or the dangers inherent in attempts to "reform" the individual by intrusive therapeutic techniques applied by the political state. To meet the requirements of the sentence, all the offender need do is to remain within the confines of the home. More extreme breaches of individuality which are associated with alternatives such as jailing are not necessary.

Perhaps the principal reason for the recent tendency toward stiffer penalties for many offenses is the sense that justice is not being done (van den Haag, 1975; von Hirsch, 1976). The perception is that many of the lighter sentences such as fines, suspended sentences, or relatively unsupervised probation have not had a significant impact upon the offender, have "failed to teach him a lesson he won't forget." For some, lighter sentences suggest that social reality is being redefined in such a way as to virtually excuse some offenses by considering them "normal." This is true, for example, of many traffic offenses, where the "scofflaw" has become legendary. At the same time, neither fines nor revocation of drivers' licenses can be regarded as satisfactory sanctions. A traffic fine of several hundred dollars, which might be necessary to produce the desired impact upon a somewhat affluent individual, could be economically devastating to a person of low income. And revocation of drivers' licenses is such a severe sanction in a society so dependent upon the automobile that noncompliance has become the rule (Bacon, 1968). Home incarceration, on the other hand, can be administered in such a way that the offender will be impressed with the public's definition of the offense as serious without being subjected to the harsh sanctions which are sometimes held to be necessary "to get their attention."

Recent decades have seen a shift in perceptions of social reality and in the relative salience of its different dimensions, so that the criterion of *reasonable cost* now looms larger than ever before in any consideration of sentencing alternatives. The shift in Federal-state relations, combined with the tendency to incarcerate more and more of the population, has put a severe strain upon local budgets, particularly in the case of criminal justice agencies. The cost-benefit analysis has become a way of life. The escalation of costs has led to a different definition of realities even on the part of many political conservatives, who are now questioning the construction of jails and prisons on grounds of the tremendous expense. Thus, a major share of those who might have once opposed the concept of home incarceration as "coddling" of the offender may well see things differently given their new perceptions of social reality.

Home incarceration also offers the virtue of *reversibility*. Should unforeseen problems arise in any particular case, revocation proceedings could be initiated very easily. If home incarceration were to be administered, for example, through use of a probation contract, current conceptions of justice could be adhered to in such a way as to satisfy everyone that the "reparation" was being handled fairly. The court would agree to this sentencing alternative with the written understanding that the offender agreed to abide by certain conditions spelled out in the contract. Such niceties would have had little appeal in former times, but the nature of social reality is now such that it is increasingly important that sentencing alternatives allow for more complete consideration of the rights of offenders, including the right to fair revocation procedures. At the same time, the rights of society are insured. In effect, the court agrees to restrict the degree of reprobation one step further in an effort to reconcile the offender and the community while the offender recognizes the justice of the sentence and agrees to conform (Galvin et al., 1977).

Current conceptions of social reality are less prone to an "all or nothing" point of view and more willing to incorporate various shades of gray. Thus, the *divisibility* of a particular sentencing alternative has become more and more important. Again, home incarceration fits this new reality. The term of confinement can be as little (in theory) as an hour or as much as perhaps a year. And the sentence is further divisible in that it could be specified for certain hours of the day only so as to allow for continued employment, schooling, treatment, or other activities which would help to maintain ties between offender and community. Should the offender become ill or should some emergency arise, a quick telephone call could be made to obtain special exceptions to the nature of the confinement.

In the earlier theoretical examinations of the goals of punitive sanctioning (Ball, 1978, 1979), the increasing use of restitution as a sentencing alternative was mentioned as an example of the implicit use of restricted reprobation aimed at the reparation of a perceived breach in the social reality enforced by law. Rather than to jail the offender, which is increasingly perceived as less than a "reparation" or resolution of the offense, or to levy a fine, which is increasingly perceived as a reparation paid to the state at the expense of the direct victim, the offender is required to make restitution to the victim. In this way, things are "made right" in a way that is more satisfying to the contemporary mentality. Home incarceration has the added advantage of *compatibility* with this and many other newer (or, more accurately, resurrected) alternative sentencing practices. While as a symbolically negative statement the offender would be confined to the home by the offended community, restitution would balance the reparation through a positive gesture on the part of the offender. Or in the case of a drunken driver, for example, home incarceration might be conceived of as the symbolic reprobation or negative gesture; participation in an alcohol education or treatment program might represent the positive statement of the offender's willingness to "reform" and attempt effective reconciliation with the norm of reciprocity (Harris, 1979; Ball and Lilly, 1984).

Finally, there is the issue of *perceived relevance to organizational goals.* In times when retribution was the major goal of sentencing, home incarceration would likely have been perceived as too lenient in many cases. But probation, for example, was developed precisely because of a growing sense that mere retribution was often counterproductive. Probation agencies are almost unanimous in their view that the more punitive sentences tend to separate offender from community, but they are also in widespread agreement that one of their major goals must be to reassure the public that offenders are being punished and that probation is not merely an institutionalized way of allowing them to go "Scot free" (Thomson and Fogel, 1981). Faced with these social realities, the agencies might find home incarceration an alternative which would provide the public with clear evidence of decisive reprobation beyond a "slap on the wrist" and assuage their moral indignation at the breach of collective definitions of propriety while providing the agencies with a means to supervise caseloads in a manner more restrained than the use of the local jail or detention center. Home incarceration would seem to be even more acceptable under an explicit theoretical formulation which specified the aim of such sanctions as neither retribution, utility, nor reformation, *per se*, but as a dialectical combination of all three guided by the concept of the most restricted reprobation possible which will still provide the sense of justice in terms of a suitable reparation of the social reality which has been violated.

Theoretical Limitations of Home Incarceration

All this is not to say that there are no problems with the notion of home incarceration as a sentencing alternative. Indeed, it is possible that our reading of the contemporary social reality is flawed in some important way. One problem might arise in connection with the Anglo-American tradition that "A man's home is his castle." Home incarceration might represent a significant breach of this traditional definition in that it would have the effect of converting the home into a prison. But would it be so perceived? At this point, we confess some uncertainty.

To what extent would home incarceration allow the state access to the "sanctity" of the home? When we began our explorations of home incarceration, our initial idea involved the potential use of community volunteers who would make periodic telephone calls to monitor compliance and who might also make "spot checks" through unannounced visits to the home. In terms of our theoretical perspective, it was felt that this would serve an important symbolic function by returning some of the supervision function to the community and building a closer relationship between the community and its criminal and juvenile justice systems. But there is many a slip between theoretical cup and application lip. Since that time, judges in both New Mexico and Florida have experimented with devices which can be attached to the offender's wrist or ankle. Once this transmitter is activated and a receiver is attached to the domestic telephone, the offender cannot move more than approximately 150 yards from the telephone without triggering a telephone signal to the central console located in the probation agency or some other monitoring center. We have already pointed to the real "Orwellian overtones" (Ball and Lilly, 1984).

On the other hand, some would argue that the nature of contemporary social reality is such that the state already has the power to penetrate the home in ways far beyond any envisioned by the "castle" tradition. And it is surely true that the home has lost much of its "sanctity" in recent years as the public has become aware of the extent of child abuse, spouse abuse, incest, and other now intolerable violations of presently accepted social standards. Just what is really involved in the symbolism of the home? Perhaps this is the central theoretical problem to be explored in any full-fledged examination of home incarceration as a sentencing alternative.

In the earliest of the theoretical explorations of sanctioning policy described above, one of the authors has stressed the theoretical significance of the emergence of individuality, especially in recent times (Ball, 1978). Cassirer (1955: 171-173) describes the transformation as bringing a new consciousness of "inner freedom," a shift which on the one hand brought more nonconformity and on the other a new ethical sensitivity and concern for the rights of the individual. One of the principal factors giving rise to increased individuality was the development of domestic privacy (Aries, 1962; Shorter, 1977). As late as the Middle Ages, the home was generally open to a variety of friends and neighbors who roamed through it almost at will. It was only with the coming of the concept of privacy that the home became divided into various zones including the "surround" or area between property line and the home itself, "region" or area comprised of living rooms and parlors, and "nucleus" or area made up of bedrooms and bathrooms once the latter came on the scene (Ashcraft and Scheflen, 1976). Where strangers such as the garbage collector would be allowed into the surround, only those with more intimate business would be expected to seek entrance into the area defined as region, and only the closest of acquaintances would be permitted into bedrooms and bathrooms.

So it was that domestic privacy and individuality developed concomitantly. Within the past century, the telephone has allowed outsiders to "invade" the home at will while radio and television have enabled residents to hear and see the outside world from inside the confines of their domestic privacy. Still, there remains a close connection between the social reality of the free individual and the social reality of domestic privacy. What are the implications when and if the state converts the home into a jail?

As indicated above, our conception of the goal of sentencing policy as essentially involving a dialectical combination of the best features of the older doctrines of retribution, utility, and reformation in an effort at restricted reprobation in the interest of satisfactory reparation of social reality lays heavy stress upon *restraint*. Only the guilty must be punished, and the punishment must be fitting. Proponents of alternatives to institutional incarceration have been subjected to justifiable criticism for ignoring significant disadvantages of apparently more restrained approaches, especially the so-called "add-on" effect (Greenberg, 1975). When "diversion" programs were created, for example, what often happened was that minor infractions which would have once been ignored or handled with a warning were now referred to the diversion program. Rather than keeping people out of jail, the programs sometimes tended to extend the control of the state even further. Thus, it is important to emphasize that our theoretical perspective leads to advocacy of the *least* restriction on individual liberty consistent with the goal.

Conclusion

Alternative sentencing policies are usually adopted as matters of expedience. Only rarely is there an attempt to consider a new proposal in the light of extended theoretical analysis informed by the humanities and social sciences. Here we have undertaken to make a beginning at such a consideration with respect to the development of home incarceration. If the goal of sentencing can be said to represent a reasonable combination of traditional doctrines of retribution, utility, and reformation aimed at restricted reprobation in the overall interest of the satisfactory symbolic reparation of collective definitions of social reality, home incarceration seems well worth further exploration. It represents an alternative which is communicable in terms of contemporary realities, which is not overly complex, and which would appear to provide the potential impact desired in many cases. It is characterized by reasonable cost, and it is both reversible should it fail and divisible into a variety of time frames which might be tailored to the particular offender subjected to such a sentence. Finally, this alternative seems to be quite compatible with others, including restitution, education, treatment, or community service, with which it could be combined, and it has clear relevence to the organizational goals of agencies such as probation departments.

Yet there remain reasons for continued debate. From a theoretical perspective, the first is the issue of the place of the home in current conceptions of social reality, especially given the historically close relationship between domestic privacy and the social psychology of the free individual. From a practical point of view, there is the danger of the "add-on" effect. A full and free debate may allow us to institute home incarceration with closer attention to its possible dangers. At a minimum, it ought to make it clearer to us all just what we are doing.

REFERENCES

Aaronson, D.E., Hoff, B.H., Jaszi, P., Kittrie, N.M., and Sarri, D. (1977) *The new justice: alternatives to conventional criminal adjudication*. Washington, D.C.: U.S. Government Printing Office.

Aries, P. (1962) *Centuries of childhood: a social history of family life*. Translated by R. Baldack. New York: Vintage.

Ashcraft, N. and Scheflen, A.E. (1976) *People space: the making and breaking of human boundaries*. Garden City, New York: Anchor.

Bacon, S. (1968) Traffic accidents involving alcohol in the U.S.: second stage aspects of a social problem. *Quarterly journal of studies on alcohol supplement* 4: 11-33.

Ball, R.A. (1978) Toward a dialectical criminology. In *Crime, law, and sanctions: theoretical perspectives*, ed. M.D. Krohn and R.L. Akers. Beverly Hills, California: Sage.

——— (1979) A theory of punishment: restricted reprobation and the reparation of social reality. In *Structure, law, and power: essays in the sociology of law*, ed. P.J. Brantingham and J.M. Kress. Beverly Hills, California: Sage.

Ball, R.A. and Lilly, J.R. (1983a) The use of home incarceration as an alternative. Paper presented at the VI International Conference on Criminology, Vienna.

——— (1983b) Home incarceration for drunken drivers. Paper presented at Annual Meetings of the American Society of Criminology, Denver.

——— (1984) The potential use of home incarceration with drunken drivers. In *Critical issues in criminal justice*, ed. J.E. Scott and T. Hirschi. Beverly Hills, California: Sage.

——— (forthcoming) Home incarceration: an alternative to total incarceration. *The justice system journal*.

Cassirer, E. (1955) *The philosophy of symbolic forms: vol. 2, mythical thought*. New Haven, Connecticut: Yale University Press.

Fauconnet, P. (1975) *Responsibility*. Translated by W. Jeffrey, Jr., Paris: Felix Alcan.

Feinberg, J. (1968) Collective responsibility. *Journal of philosophy 65*: 674-688.

Galvin, J.C., Busher, W., Greene, W., Kemp, G., Harlow, N., and Hoffman, K. (1977) *Instead of jail: pre- and post-trial alternatives to jail incarceration: vol. 4: Sentencing the misdemeanant*. Washington, D.C.: U.S. Government Printing Office.

Gerety, P. (1980) A French program to reduce pretrial detention. *Crime and delinquency* 26: 22-34.

Gouldner, A. (1960) The norm of reciprocity: a preliminary statement. *American sociological review 25*: 161-172.

Greenberg, D.F. (1975) Problems in community corrections. *Issues in criminology* (Spring): 22-32.

Hall, J. (1960) *General principles of criminal law*. Indianapolis: Bobbs-Merrill.

Harris, M.K. (1979) *Community service by offenders*. Washington, D.C.: National Institute of Corrections.

Hart, H.L.A. (1968) Postscript: responsibility and retribution. In *Punishment and responsibility*, ed. H.L.A. Hart. New York: Oxford University Press.

Hawkins, D.J.B. (1944) *Punishment and moral responsibility. Modern law review 7*: 205-208.

Heijder, A. (1980) Can we cope with alternatives? *Crime and delinquency 26*: 1-9.

Lilly, J.R. and Ball, R.A. (1982) A critical analysis of the changing concept of criminal responsibility. *Criminology 20*: 169-184.

Morris, H. (1968) Persons and punishment. *The monist 52:* 476-479.

National Advisory Commission on Criminal Justice Standards and Goals for Corrections (1973) *Report of the national advisory commission for criminal justice standards and goals for corrections*. Washington, D.C.: U.S. Government Printing Office.

Removing children from jails (1980) Washington, D.C.: U.S. Government Printing Office.

Shorter, E. (1977) *The making of the modern family*. New York: Basic Books.

Sutherland E. (1950) The sexual psychopath laws. *Journal of criminal law and criminology 40*: 543-554.

Thomson, D and Fogel, D. (1981) *Probation work in small agencies: a national study of training provisions and needs*. Chicago: Center for Research in Law and Justice.

van den Haag, E. (1975) *Punishing criminals*. New York: Basic Books.

von Hirsch, A. (1975) *Doing justice: the choice of punishments*. New York: Hill and Wang.

Probation Supervision: Mission Impossible

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PROBATION IS in serious trouble! Unfortunately this statement is not particularly shocking or even controversial. The litany of accusations against probation departments runs the gamut from depicting them as do-nothing bureaucracies (Blackmore, 1980:13) to accusing them of being harmful intervention agencies (Forer, 1980:210). Judicial support for probation services has eroded (Krajick, 1980:9; Johnson, 1985:206), public support has diminished (Fogel, 1984:67; Duffee, 1984:295), legislative funding has been reduced (Petersilia, 1985:339), and academic backing has wavered (Rothman, 1980; Wilson, 1983). Probation officers themselves question the efficacy and purposefulness of their actions (Lide, 1980; Cushman, 1985:327), while probationers seriously doubt that any good will come from their contacts with probation officials (Gilsinan, 1982:183). After examining the current probation situation, a leading researcher and consultant on correctional issues commented: "In the present circumstances the survival of the idea of probation as a service is in jeopardy. Little wonder that in most agencies the vitality of conventional practices is hardly seen." (Conrad, 1985:421).

There is consensus among academic researchers that probation departments will not be revitalized until they develop a clear-cut mission (Breed, 1984; Harris, 1984; McAnany, 1984; Thomson et al., 1984; Petersilia, 1985). Upon completing an extensive study of probation practices in California, a group of Rand researchers recommended: "The mission of probation and the responsibilities of probation agencies should be redefined, limited, and explicitly stated, by statute if necessary." (Petersilia et al., 1985:388-89). In an attempt to establish a viable mission, probation practitioners and academicians have put forth several proposals that address the dilemma of whether probation services should stress assistance or control. Such proposals generally fall into three broad categories: (1) service orientation, (2) differential supervision, and (3) intensive supervision. These categories can be placed on an assistance-control continuum with service orientation at the assistance end, differential supervision occupying a center position, and intensive supervision at the control end.

Those espousing a service orientation (Fogel, 1978; Bottom and McWilliams, 1979; Conrad, 1982, 1984) would uncouple surveillance from probation responsibilities, leaving the officer free to provide help and assistance to the offender. Eschewing a law enforcement role, probation officers would counsel offenders and refer them to appropriate community services. Dutch probation officers have assumed such a mission and in some cases have refused to give the police information concerning possible criminal activity on the part of their probationers (Harris, 1984:34).

Supporters of the differential supervision approach (Wright et al., 1984; Clear and Gallagher, 1985; Glaser, 1985; O'Leary, 1985) advocate the implementation of risk assessments for offenders. The type of supervision given to probationers would be related to their risk potential. Classification is generally considered a tool for improving an existing probation system rather than a radical solution. The centrist position of proponents of differential supervision is reflected in the statement of the chief probation officer of Orange County, California:

> The goal of probation supervision is the protection of the community, and that supervision should not singularly emphasize either rehabilitation or punishment. The focus should be on assessment and management of the offender in terms of risks and needs. The return on that investment will be a high level of community protection from those individuals who present the greatest risk of committing further law violations, good supervision and resocialization programs, and the ability to use resources wisely (Schumacher, 1985:445).

Intensive supervision programs would establish reduced caseloads in an effort to provide a punitive community-based alternative to prison (Petersilia, 1985:389). An integral feature of the intensive supervision approach is the inclusion of a strict surveillance component. The Georgia plan (generally considered an exemplar of intensive supervision programs) requires participants to abide by the following rules:

> (1) five face-to-face contacts with the IPS team every week, one in the office, one on the job, three at home including one on the weekend;
> (2) weekly verification of employment;
> (3) nightly curfew, ordinarily at 8:00 p.m. unless the probationer has a job with hours that conflict with this limit;
> (4) coordinated record check with law enforcement every week (Conrad, 1985:414).

The efficacy and appropriateness of the three prevailing approaches will be judged ultimately by their ability to reduce the criminal activity of those on probation. Although it has been argued that recidivism rates are not an accurate gauge of success (Reid, 1981:275), this single criterion continues to be the standard by which probation programs are evaluated (Walker, 1985:177). After analyzing the three prevalent motifs for revitalizing probation's mission, I suggest that, if implemented, these approaches will fail to reduce recidivism and that such failures will engender disillusionment and further weaken support for probation services. This position is informed by 15 years of probation experience wherein I was involved with supervision programs that incorporated these approaches. While probation planners have called for radical measures (Conrad, 1985), the prevailing approaches are not qualitatively different from past and current programs that have proven ineffective. There is ample research to justify this finding. I further contend that the three prevailing approaches will be ineffective for two basic reasons: (1) the emergence of organizational dynamics antithetical to program goals and (2) the conflicting nature of relationships between probation officer and defendant. My research is in agreement with Shover (1979:222) who contends that many correctional problems originate "in the structurally given conflict of interest between correctors and offenders, an inherent conflict that cannot be entirely eliminated—even by good intentions and human-relations training."

Following my critique of the current approaches I present a preliminary plan to redirect probation's mission. My proposal calls for the elimination of supervision by probation officers. Such an action would relieve probation officers of the control-assistance dilemma and free them to concentrate upon supplying objective and accurate information to the court. Probation departments would be charged with the responsibility of compiling and presenting court evaluations. If probation is recommended and counseling or treatment is needed, they would be provided by agencies outside the criminal justice system. Monitoring those placed on probation would become a computerized function performed by clerical employees of the court. With this type of reorganization probation would have a parsimonious and achievable mission—providing indepth court investigation services.

Service Orientation

A basic assumption of service orientation maintains that probation and parole officers are unable to effectively combine service and surveillance responsibilities. The strain inherent in these conflicting roles culminates in an unsatisfactory level of supervision, leaving the client floundering and the community at risk. Advocates of a mission emphasizing service would invest the police with surveillance duties, allowing the probation or parole officer to adopt a helping or advocacy role. The legendary Zebulon Brockway (1912:324) sanctioned such an approach: "The most satisfactory person for supervision of paroled men is the chief of police; not the average policemen in the great cities, nor indeed a religious or philanthropic organization or private individual." The observation of David Fogel (1978:15) about the appropriateness of parole supervision reflects a basic tenet of the service orientation: "set parole officers to the task of helping the parolee find a job and set the police to the task of keeping an eye on the parolee."

The most well developed plan for structuring a probation organization around a service orientation has been devised by Conrad (1984:264-265). Under his plan

> All persons placed on probation will be required to accept surveillance by police. To manage this function the police will establish a bureau of supervision that will receive reports from probationers on terms and at intervals prescribed by the court.

A special probation unit designated as the division of service and liaison would be established to

> ...carry out all contact services with probationers, with the aim of helping them toward a satisfactory completion of probation. Personnel assigned to the division will be qualified as counselors. They must be prepared to assume an advocate role to assure that probationers needing special services will receive them.

Probation departments in the United States have not implemented service orientation on a system-wide basis, and Conrad (1985:420) himself admitted that such a reorganization was "an idea whose time had not yet come." On the other hand small supervision units have attempted to develop a service orientation. In California a few special supervision units defined their responsibility as service to the client rather than protection of the community. This was frequently done on an ad hoc basis with the tacit approval of probation administration. I myself worked in such a unit for over a year. Stressing a service approach placed the unit in direct conflict with the police and district attorney's office and decreased the unit's credibility in the criminal justice system. Those on probation were suspicious about the sincerity of their probation officer "advocates." When several of the unit's probationers became involved in additional illegal activities, the unit was reorganized and traditional surveillance practices were reinstated. In today's "get tough climate" it is unlikely that a service orientation would receive support from either the community or other criminal justice agencies (Bartollas, 1981).

Differential Supervision Schemes

Differential supervision schemes are based upon the assumption that offenders should be supervised to an extent commensurate with their needs and the risk of recidivism. Probationers deemed unlikely to reoffend would receive minimal supervision, while those evaluated as likely to continue their illegal behavior would need close supervision. This approach seeks to ensure that supervision is applied according to objective criteria and not to question the efficacy of probation supervision. The use of classification scales lends an aura of rationality to the putative concept of differential supervision. Those familiar with probation caseloads generally acknowledge that some offenders need minimal attention while others require frequent contact. Classification systems are seen by probation administrators as providing scientific management practices which, if properly implemented, can lead to a reduction in recidivism rates.

All too often differential supervision, in reality, is a sham which serves to maintain the status quo (McCleary, 1978). Although researchers (Clear and Gallagher, 1985; Schumacher, 1985) have recommended the involvement of line staff in the planning of classification systems, in practice, probation officers are generally ordered to employ supervision scales with little or no input as to the construction of those scales. Based upon personal experience and reports from other researchers (Takagi and Robinson, 1969; Shover, 1974; McCleary, 1975, 1977; Lipsky, 1980) there is an uncertain relationship between classification standards and what actually occurs during the supervision of probationers. Rather than adhering to recommended standards (Bemus et al., 1983), individual probation officers do not accept the appropriateness of classification categories and allocate their time as they see fit. Line staff often rationalize their ad hoc style by claiming (not unrealistically) that large caseloads and classification inconsistencies make it impractical to follow strictly departmental guidelines. The idiosyncratic styles of supervision officers (Glaser, 1964) are antithetical to the goal of uniform classification and often culminate in a situation where the "paper system (classification) bears little relationship to the actual practice of staff" (Clear and Gallagher, 1985:431). In many instances, although a classification system exists, it is not being implemented.

The adoption of differential supervision will do little to resolve the assistance-control dilemma faced by probation officers. The assumption that better utilization of the probation officers' time will improve supervision capabilities and result in lower recividism rates has not been empirically demonstrated (Empey, 1982). The implementation of classification scales will allow probation departments to claim they are updating their practices without actually coming to grips with fundamental issues. More of the same, even if done scientifically, will not revitalize probation's mission.

Intensive Supervision

Recent intensive probation supervision (IPS) programs are being hailed as "promising alternatives to prison" (Petersilia et al., 1985:387), "what probation is supposed to be" (Gettinger, 1985:213), and as "wide-ranging renovations of American penology" (Conrad, 1985:410). Such fulsome praise is directed toward programs that began barely 3 years ago. The factor that generally has been credited for generating these sanguine opinions is the inclusion of a strict surveillance component in a supervision regimen. Strict surveillance is acknowledged as the element that sets current programs apart from traditional IPS efforts (Pearson, 1985). Probation officers report that assignments to IPS units have given them a more positive outlook on their jobs. The head of New York's probation service indicated: "People burned out because of a high caseload went out into the field with a whole new spirit, full of enthusiasm," while a Georgia IPS worker stated: "You don't notice the hours. You can really get into people's problems and try to help. We're so involved it's enjoyable" (Gettinger, 1985:218).

These glowing reports should be considered in light of prior experience with IPS. Typically, initial enthusiasm for such programs disintegrates when, upon closer scrutiny, it cannot be demonstrated that intensive supervision produces lower recidivism rates. An observation by McCleary et al. (1979:651) seems particularly germane when considering the effectiveness of current IPS efforts: "when social scientists tell you that your program has a miraculous effect, be skeptical."

The San Francisco Project, involving the use of IPS in Federal probation during the 1960's, clearly revealed that probationers randomly assigned to reduced caseloads were no more law abiding than their counterparts assigned to regular caseloads (Banks et al., 1977). California's extensive experiments with various IPS type programs in the 1960's and 70's generally demonstrated that intensive supervision tactics failed to reduce recidivism (Shover, 1979). Some of these programs also included strict surveillance procedures. I was involved in a program that required offenders to report several times per week. It was clear that the probation officer's primary role in this unit was surveillance. Unfortunately such a watchdog approach was no more effective than an advocacy role in weaning probationers away from criminal activity, and the unit was eventually abandoned. In the middle 1970's the Unified Delinquency Intervention Services operated by the Illinois Department of Corrections claimed spectacular success in reducing delinquency among juveniles by using a package of intensive supervision methods (Walker, 1985:178). Subsequent research revealed that lower recidivism claims were more the product of a mathematical regression than an actual success rate (McCleary et al., 1978; McDowall et al., 1981).

While it is probably too early to ascertain accurately the effectiveness of current IPS programs, it can be questioned whether criteria for inclusion in such programs, generally only nonviolent offenders are accepted (Conrad, 1985), and the tendency for statistics producers to include information favorable to organization expectations (McCleary, 1975; Shover, 1979) are perhaps more significant factors in the "success" of IPS efforts than supervision measures—however intensive. The statement of a Georgia Institute of Technology researcher regarding IPS programs should be noted:

> Can they divert? Yes, they can. Are they cost-effective, compared to prison? Yes, they are. But if you ask me if they can rehabilitate people from a life of crime, that's another matter (Banks, quoted in Gettinger, 1985:218).

Barriers to Effective Supervision

Fifteen years of probation experience and scores of empirical studies have convinced me that traditional practices of probation officials cannot appreciably change the behavior patterns of criminal offenders. Supervision efforts by probation officers—no matter how dedicated or rationally based—will not reduce recidivism rates. The relationships between officer and client, and those between officer and probation bureaucracy, are structured in such a way that effective supervision is restricted.

Bureaucratic Relationships

The significance of bureaucratic dynamics in influencing supervision outcomes has been reported by several researchers (Takagi, 1967; Takagi and Robinson, 1969; Shover, 1974, 1979; McCleary, 1975, 1978; Prus and Stratton, 1976; Rosecrance, 1985). The very structure of probation organizations promotes distortions in the supervision process and many decisions are made according to bureaucratic imperatives, rather than case-specific goals. Often the "failure" or "success" of probationers is determined as much by organizational dynamics as by the offenders' behavior. Probation departments are organized in such a way that case decisions by line staff frequently are considered in light of anticipated responses by either their supervisors or probation administration. These considerations lead to anticipatory supervision and to actions ensuring that administration-approved programs will be evaluated positively.

Although individual supervision styles vary considerably, decisions of direct concern to probationers such as violations or revocations of probation generally are made with an eye to how the officer's supervisor will react. Perception of supervisor reaction is an important aspect of the case process. Takagi and Robinson (1969:85-6) found a

> ...high degree of correspondence between district supervisors and their subordinates on the case-recommendation task. This finding suggests that the selective enforcement of some rules is as much characteristic of the officials as selective adherence is a characteristic of the violator.

Traditionally, staff supervisors are concerned with uniform decisions that facilitate a smooth work flow rather than either rehabilitation of the offender or protection of the community (Blumberg, 1967). Since probation officers anticipate supervisorial responses, their decisions are in turn influenced by organizational considerations not directly related to the offender's behavior.

When new programs are actively supported by administration there is a tendency for probation officers to adjust their actions to ensure favorable evaluations of those programs. In many instances significant behavior changes occur among probation officers, not among offenders. While working as a probation officer I was aware of situations similar to the following incident reported by McCleary (1975:224). When preliminary estimates of an intensive supervision program showed no appreciable change in recidivism, administrators indicated that thereafter officers assigned to small caseloads

> . . . would be promoted strictly on their caseload recidivism rates, the lower the rate the better the chance of promotion. A subsequent re-evaluation of the program found that the smaller caseloads were more effective than the larger caseloads in reducing recidivism. . . . What happened, of course, is that the researchers did observe a statistical difference but they incorrectly attributed this difference to the effectiveness of the treatment. In fact, the change was due entirely to a shift in the structural dynamic of the parole agency.

Client Relationships

In my probation experience I observed that interactions between probation officers and their clients were characterized by patent mendacity. Neither of the participants in this relationship trusted the other: Probation officers were afraid of being manipulated or "conned" (Dawson, 1969), while probationers assumed that if they "stepped out of line" the officers (no matter how friendly or treatment oriented) would take coercive action. Studt (1973:89) noted a similar pattern, i.e., a "context of suspicion" that permeated relationships between parole officer and parolee.

The difficulties experienced by probation officers when they attempt to combine surveillance and service duties has been well reported (Krajick, 1980). The probationer's problem in accepting the officer at face value has received less consideration. Gilsinan (1982:184) described the offender's dilemma:

> The relationship between the p.o. and his clients forms a fulcrum for balancing the competing demands of treatment and control. The agent perceives himself as attempting to strike a balance that will be in the client's best interest. The client, however, is part of a different social world. For him, the distinction between treatment and control is a subtle one at best. More often he sees no distinction at all. Thus, control often becomes the dominant motif in the client's perspective of the relationship. Clients, then, must themselves learn how to do probation.

Inherent distrust was succinctly described by a dope addict on probation who told me: "When push comes to shove you dudes will give us up—everytime." David Rothman (1980:10) reported that progressive reformers (circa 1910-1930) had failed to link treatment and protection and that "when conscience and convenience met, convenience won. When treatment and coercion met, coercion won."

Inability to develop an honest relationship between probation officers and their offender clients is further exascerbated by the different social worlds they inhabit. Their perspectives of reality and purpose are often divergent. Ex-convicts who have described their probation and parole experiences (Irwin, 1970; Bunker, 1973; Braly, 1976) have emphasized that lack of common understanding rendered relationships with supervision officers shallow and unproductive. Irwin (1970:157) observed a phenomenon that can applied to probation relationships:

> ...the parole social system has brought into close contact, in an agent-client relationship, two people who represent different social worlds—one, the parole agency, which is unduly influenced at the formal level by conservative segments of society; and the other, a deviant subsociety.

A New Probation Mission

The following is a preliminary outline of a plan for restructuring probation's mission. The basic direction of the reorganization will be put forth. The first step would involve the complete elimination of probation supervision. I would stress the word *complete*. If probation departments retain any vestige of supervision duties, they inevitably will seek to expand their responsibilities in that area (Thompson, 1984:107), and as long as probation departments are involved with supervision, other social agencies will be reluctant to provide similar services, out of respect for the territory of a powerful organization (Conrad, 1979). Even though researchers have called for scaling down the scope of probation (Von Hirsch, 1976; Wilks and Martinson, 1976; Wilson, 1983; Petersilia et al., 1985), they have stopped short of advocating an elimination of supervision. It seems appropriate to take the logical final step and discontinue probation supervision.

This plan does not espouse the abolition of probation. I would support increasing the use of summary and unsupervised probation. These forms of probation already are well-established in some jurisdictions (National Council on Crime and Delinquency, 1973). Those probationers actually in need of assistance in rehabilitation efforts could receive help from other community agencies. Some of the dollar savings that result from discontinuing probation supervision could be channeled to local agencies to improve services. Under the present system, probation personnel are expected to offer counseling and advice in areas where, as court officers, they have no particular training or skill. The comments of Wilks and Martinson (1976:5) illustrate this point:

> The criminal justice system has no special expertise in the field of education, mental health, vocational training or job development. In fact the provision of these services by the criminal justice system leads to costly duplication, unnecessary segregation of offenders from nonoffenders, and perhaps destructive competition between offenders and nonoffenders for scarce resources.

A branch of the court should be established to monitor adherence to court ordered probation conditions, e.g., restitution, fines, community service, or attendance at treatment programs. Such a branch would make extensive use of computers to track probationers. This type of monitoring essentially would be a clerical function, and employees would not require advanced educational training or social science backgrounds. When defendants fail to abide by the conditions of probation or are arrested on a new charge the monitor would schedule a violation hearing. At that hearing defendants would have an opportunity to explain their behavior. If the court found the defendant's explanation unsatisfactolry, a revocation hearing would be scheduled. This two-step procedure would comply with *Morrisey* v. *Brewer* rulings. While this method of surveillance may be considered impersonal and overly structured, it would effectively eliminate the individual discretion that characterizes contemporary supervision.

Under this planned reorganization, probation would be left with an unambiguous mission—providing court investigation services. These services would include traditional presentence recommendations as well as investigations of violation reports, revocation hearings, or early termination requests. In some situations the judge might request followup investigations at periodic intervals. These would be considered progress reports rather than supervision regimens and would be done by probation investigators. In summary, the reorganized probation department would handle all probation matters that come before the court. Reporting to the courts generally has been acknowledged as the most professional aspect of probation work (Blackmore, 1980). Hopefully, concentrating exclusively on court reporting would improve the quality and objectivity of those reports.

Summary and Conclusion

In order to revitalize probation's mission, it is essential to give it a task that is doable. Presently probation departments are overextended in trying to provide supervision that is neither wanted nor productive. Numerous empirical studies are unable to substantiate the claims of probation officials and their apologists who contend that if caseloads were smaller, better classifications procedures were implemented, and more dedicated officers were hired, supervision could be improved significantly. There are structural components in present probation systems that virtually rule out meaningful improvement (Shover, 1979). Bureaucratic dynamics that operate contrary to overall program goals and the conflicting nature of officer-client relationships make it unlikely that probation supervision can ever reduce recidivism rates. Since supervision has proved an unachievable task, it seems counterproductive to continue the effort. Futile efforts to improve supervision capabilities detract from probation's central mission—court investigation services.

My reorganization proposal would definitely not do away with probation. For whatever reasons, probation has proven successful, in that three-quarters of all those put on probation do not reoffend (Empey, 1982:379). On the other hand, supervision is frequently irrelevant to this process: "In all probability the offender would do just as well without any of that alleged treatment—that is to say would do just as well with a suspended sentence which is simply probation without the supervision" (Walker, 1985:177). The restructuring of probation does not signal an end to rehabilitation nor affirmation that "nothing works." It is merely an admission that probation supervision does not work. Other social agencies can and should take up the mantle of services that probation puts aside. While a variety of problems may be involved in discontinuing probation's supervision role, even more would accrue if we continue to shore up an ineffective system.

Leading researchers in the field of corrections have called for sweeping changes in probation services. The responses generally have recommended incremental and superficial modifications rather than radical reorientations. Although classification procedures and intensive supervision programs may have limited or regional success, they are not going to revitalize probation. An awareness that prior supervision programs have failed to reduce recidivism should be a caveat that continuation of the present probation system is extremely problematic.

A group of Rand researchers, after clearly demonstrating the failure of felony probation supervision in California, stated: "We certainly do not recommend that they abandon their counseling or rehabilitation goals" (Petersilia et al., 1985:389). On the contrary, it would seem that this is an opportune time to do precisely that—abandon an unworkable supervision system. Borrowing an investment analogy—it's time to cut our losses. While it is difficult to give up the dream of combining assistance and control, it must be recognized that probation supervision is an impossible mission.

REFERENCES

Banks, J., Porter, A. L., Rardin, R. L., Silver, T. R., and Unger, V. E. *Evaluation of Intensive Special Probation Projects.* Washington, D.C.: U.S. Government Printing Office, 1977.

Bartollas, C. *Introduction to Corrections.* New York: Harper and Row, 1981.

Bemus, B., Arling, G., and Quigly, P. *Workload Measures for Probation and Parole.* Washington, D.C.: National Institute of Corrections, 1983.

Blackmore, J. "Big City Probation: Treatment? There's No Treatment Going On Here," *Corrections Magazine,* 1980, *6,* pp. 13-15.

Blumberg, A. *Criminal Justice.* Chicago: Quandrangle, 1967.

Bottoms, A. E. and McWilliams, W. "A Non-Treatment Paradigm for Probation Practice," in P. McAnany, D. Thomson, and D. Fogel (eds.), *Probation and Justice: Reconsideration of Mission.* Cambridge, Massachusetts: Oelgeschlager, Gunn and Hain, 1984, pp. 203-250.

Braly, M. *False Starts.* Boston: Little Brown, 1976.

Breed, A. "Foreword," in P. McAnany, D. Thomson, and D. Fogel (eds.), *Probation and Justice: Reconsideration of Mission.* Cambridge, Massachusetts: Oelgeschlager, Gunn and Hain, 1984, pp. ix-xi.

Brockway, Z. *Fifty Years of Prison Service.* New York: Charities Publication Committee, 1912.

Bunker, F. *No Beast So Fierce.* New York: Norton, 1973.

Clear, T. and Gallagher, K. "Probation and Parole Supervision: A Review of Current Classification," *Crime and Delinquency,* 1985, *31,* pp. 423-443.

Conrad, J. P. "Who Needs a Doorbell Pusher?," *Prison Journal,* 1979, *59,* pp. 17-26.

_________. "The Quandry of Dangerousness," *British Journal of Criminology,* 1982, *22,* pp. 255-267.

_________. "The Redefinition of Probation: Drastic Proposals to Solve an Urgent Problem," in P. McAnany, D. Thomson, and D. Fogel (eds.), *Probation and Justice: Reconsideration of Mission.* Cambridge, Massachusetts: Oelgeschlager, Gunn and Hain, 1984, pp. 251-273.

_________. "The Penal Dilemma and Its Emerging Solution," *Crime and Delinqnuency,* 1985, *31,* pp. 411-422.

Cushman, R. C. "Probation in the 1980's: A Public Administration Viewpoint," in P. McAnany, D. Thomson, and D. Fogel (eds.), *Probation and Justice: Reconsideration of Mission.* Cambridge, Massachusetts: Oelgeschlager, Gunn and Hain, 1984, pp. 327-346.

Dawson, R. O. *Sentencing.* Boston: Little Brown, 1969.

Duffee, D. "Client Biography and Probation Organization," in P. McAnany, D. Thomson, and D. Fogel (eds.), *Probation and Justice: Reconsideration of Mission.* Cambridge, Massachusetts: Oelgeschlager, Gunn and Hain, 1984, pp. 295-326.

Empey, L. T. *American Delinquency.* Homewood, Illinois: Dorsey, 1982.

Fogel, D. "Foreword," in R. McCleary, *Dangerous Men: The Sociology of Parole.* Beverly Hills: Sage, 1978.

_________. "The Emergence of Probation as Profession," in P. McAnany, D. Thomson, and D. Fogel (eds.), *Probation and Justice: Reconsideration of Mission.* Cambridge, Massachusetts: Oelgeschlager, Gunn and Hain, 1984, pp. 65-100.

Forer, L. G. *Criminals and Victims.* New York: W. W. Norton, 1980.

Gettinger, S. "Intensive Supervision: Can it Rehabilitate Probation," in J. Sullivan and J. L. Victor (eds.), *Annual Editions: Criminal Justice.* Guilford, Connecticut: Dushkin Publishing, 1985, pp. 212-218.

Gilsinan, J. F. *Doing Justice.* Englewood Cliffs, New Jersey: Prentice-Hall, 1982.

Glaser, D. *The Effectiveness of a Prison and Parole System.* Indianapolis: Bobbs Merrill, 1964.

_________. "Who Gets Probation and Parole: Case Study Versus Actuarial Decision Making," *Crime and Delinquency,* 1985, *31,* pp. 367-378.

Harris, M. K. "Rethinking Probation in the Context of the Justice Model," in P. McAnany, D. Thomson, and D. Fogel (eds.), *Probation and Justice: Reconsideration of Mission.* Cambridge, Massachusetts: Oelgeschlager, Gunn and Hain, 1984, pp. 15-38.

Irwin, J. *The Felon.* Englewood Cliffs, New Jersey: Prentice-Hall, 1970.

Johnson, L. "Frustration: The Mold of Judicial Philosophy," in J. Sullivan and J. L. Victor (eds.), *Annual Editions: Criminal Justice.* Guilford, Connecticut: Dushkin Publishing, 1985, pp. 206-211.

Krajick, K. "Probation: the Original Community Program," *Corrections Magazine,* 1980, *6,* pp. 6-12.

Lide, W. "A Victim of Probation's Burnout Blues," *Corrections Magazine,* 1980, *6,* pp. 16-18.

Lipsky, M. *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services.* New York: Sage, 1980.

McAnany, P. "Mission and Justice: Clarifying Probation's Legal Context," in P. McAnany, D. Thomson, and D. Fogel (eds.), *Probation and Justice: Reconsideration of Mission.* Cambridge, Massachusetts: Oelgeschlager, Gunn and Hain, 1984, pp. 39-64.

McCleary, R. "How Structural Variables Constrain the Parole Officer's Use of Discretionary Power," *Social Problems,* 1975, *23,* pp. 361-373.

———. "How Parole Officers Use Records," *Social Problems,* 1977, *24,* pp. 576-589.

———. "*Dangerous Men: The Sociology of Parole.* Beverly Hills: Sage, 1978.

McCleary, R., Gordon, A. C., McDowall, D., and Maltz, D. *A Reanalysis of UDIS.* Chicago: Center for Research in Criminal Justice, University of Illinois, 1978.

———. "How a Regression Artifact Can Make Any Delinquency Program Look Effective," in L. Sechrest (ed.), *Evaluation Studies Review Annual (vol. 4).* Beverely Hills: Sage, 1979, pp. 626-652.

McDowall, D., McCleary, R., Gordon, A. C., and Maltz, M. "Regression Artifacts in Correctional Program Evaluations," in S. E. Zimmerman and H. D. Miller (eds.), *Corrections at the Crossroads: Designing Policy.* Beverly Hills: Sage, 1981, pp. 27-47.

National Council on Crime and Delinquency "The Nondangerous Offender Should Not Be Imprisoned: A Policy Statement," *Crime and Delinquency,* 1973, *19,* pp. 449-456.

O'Leary, V. "Reshaping Community Corrections," *Crime and Delinquency,* 1985, *31,* pp. 349-366.

Pearson, F. S. "New Jersey's Intensive Supervision Program: A Progress Report," *Crime and Delinquency,* 1985, *31,* pp. 393-410.

Petersilia, J. "Community Supervision: Trends and Critical Issues," *Crime and Delinquency,* 1985, *31,* pp. 339-347.

Petersilia, J., Turner, S., Kahan, J., and Peterson, J. "Executive Summary of Rand's Study, Granting Felons Probation: Public Risks and Alternatives," *Crime and Delinquency,* 1985, *31,* pp. 379-392.

Prus, R. and Stratton, J. "Parole Revocation and Decision-Making: Private Typings and Official Designations," *Federal Probation,* 1976, *40,* pp. 48-54.

Reid, S. T. *The Correctional System.* New York: Holt, Rinehart and Winston, 1981.

Rosecrance, J. "The Probation Officers' Search For Credibility: Ball Park Recommendations," *Crime and Delinquency,* 1985, *31,* pp. 539-554.

Rothman, D. *Conscience and Convenience: the Asylum and its Alternatives in Progressive America.* Boston: Little Brown, 1980.

Schumacher, M. A. "Implementation of a Client Classification and Case Management System: A Practitioner's View," *Crime and Delinquency,* 1985, *31,* pp. 445-455.

Shover, N. "Experts' and Diagnosis in Correctional Agencies," *Crime and Delinquency,* 1974, *20,* pp. 347-359.

———. *A Sociology of American Corrections.* Homewood, Illinois: Dorsey, 1979.

Studt, E. *Surveillance and Service in Parole.* Washington, D.C.: National Institute of Corrections, 1973.

Takagi, P. "Evaluation Systems in a Parole Agency," unpublished dissertation, Stanford University.

Takagi, P. and Robinson, J. O. "The Parole Violator: An Organizational Reject," *Journal of Research in Crime and Delinquency,* 1969, *5,* pp. 78-86.

Thomson, D. "Prospects for Justice Model Probation," in P. McAnany, D. Thomson, and D. Fogel (eds.), *Probation and Justice: Reconsideration of Mission.* Cambridge, Massachusetts: Oelgeschlager, Gunn and Hain, 1984, pp. 101-136.

Thomson, D., McAnany, P., and Fogel, D. "Introduction," in P. McAnany, D. Thomson, and D. Fogel (eds.), *Probation and Justice: Reconsideration of Mission.* Cambridge, Massachusetts: Oelgeschlager, Gunn and Hain, 1984, pp. 1-14.

Von Hirsch, A. *Doing Justice.* New York: Hill and Wang, 1976.

Walker, S. *Sense and Nonsense About Crime.* Monterey, California: Brooks Cole, 1985.

Wilks, J. and Martinson, R. "Is the Treatment of Criminal Offenders Really Necessary?," *Federal Probation,* 1976, *40,* pp. 3-9.

Wilson, J. Q. *Thinking About Crime.* New York: Basic, 1983.

Wright, K., Clear, T., and Dickson, P. "Universal Applicability of Probation Risk Assessment Instruments," *Criminology,* 1984, *22,* pp. 113-134.

The Dimensions of Crime

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WITH FEW exceptions, criminal justice policy is still formulated and implemented without first having a reasonable idea of the dimensions of crime. The reasons for this narrow approach are many, but the two most significant are that what is thought of as crime is mostly common crime and that dictatorial regimes are prevalent. When dealing with the dimensions of crime it should always be kept in mind that of about 160 independent countries barely 30 percent have democratic regimes, and, not surprisingly, crime committed officially or semi-officially is seldom reported.

What follows is an attempt to describe the main problems involved in determining the dimensions of crime, a subject that was often referred to and superficially discussed at the Seventh United Nations Congress on the Prevention of Crime, Milan, 1985. In spite of the Secretariat's efforts the survey of United Nations members upon which much of the article is based (doc.A/CONF.121/16,1985) is incomplete as it is based on only 65 answers or responses from only 44 percent of the United Nations membership. It covers the period 1975-80, and the offences considered are those against persons and property, drug-related offences, rape, kidnapping, robbery, theft, fraud, bribery, and corruption. Although the item "others" has been used, it has not been satisfactorily analyzed. Tentatively it is concluded that crime is increasing in the countries under consideration and that violent crime seems to reach a higher level in developing rather than developed countries, while the latter report considerably higher figures against property.[1]

In ascertaining the dimensions of crime the first thing is to examine the way in which criminalization is formulated. Without entering into details, suffice it to say that no act or omission should be regarded as criminal unless it has previously been declared as such by law. In most Islamic countries penal legislation does not apply this principle, and the 1980 Chinese Penal Code authorizes the penalization of any behavior not defined as crime but analogous to that described as such by the code. Moreover, some relatively new penal codes, among them the Cuban, also regard as criminal any conduct against the government or the state not described as such but analogous to that defined. In sum, more than a fourth of the world population of about 4.5 billion is not protected by the principle mentioned. The lack of protection is facilitated by submissive judiciaries under dictatorial regimes.

The second point is that crime cannot be confined to some modalities of common crime as is often done in official criminal statistics and criminological studies. Nowadays, mostly due to the Secretariat's initiative, the different modalities of the criminal abuse of power are part and parcel of U.N. criminal policy which means that the distinction between conventional and nonconventional crime is fading.[2] Consequently, summary executions, disappearances, torture, cruel, inhuman, or degrading treatment or punishment, illegal detention, hostages, hijacking, terrorism, riot destruction, sabotage, imposed "voluntary contributions," and many other offenses are actually common crimes whatever the privileges, functions, immunities, or ideologies involved. Among other things this means that the traditional conception of political offender belongs to the past.

According to the report, *Summary and Arbitrary Executions* (doc.E/CN.4/16,1983), the number of persons executed in the last 15 years in 38 countries as a result of the abuse of power is no less than 2 million. If other data, some gathered by nongovernmental organizations, are included, my research shows that at least 22 more countries should be added, making a total of 3 million persons "disposed of." Among other examples there is the case of Argentina in which, during the 6 years of the military junta—1976 to 1982—the number of "disappearances" was far above that of common homicides known to the police in the same period. Another is Uganda, where thousands of persons are killed, robbed, or raped every time a new dictator takes over and tries to maintain himself in power. Pakistan, both Koreas, Burma, and Sri Lanka are other obvious examples of criminal victimization. To these should be added nationalist organizations in a growing number of countries.

In order to limit these and related criminal excesses, the United Nations adopted in 1978 the *Code of Conduct for Law Enforcement Officials,* in 1981, the *Principles of Medical Ethics for the Protection of Prisoners and Detainees,* and in 1984, the convention against torture and cruel, inhuman or degrading treatment or punishment. There are also about 40 more international instruments, parties to which are many countries the political regimes of which persistently and criminally violate the supposedly protected human rights. In other words, almost at the end of the 20th century, the criminal violation of human rights is common practice.

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*The opinions expressed are not as chairman of the committee.

[1] For a comparison with previous surveys about the extent of crime, see *A Guide to United Nations Criminal Policy,* 1985, by the author. The survey mentioned above may be considered the third if the *Statistical Report on the State of Crime,* 1950 (doc.E/CN.5/204) is taken into account.

[2] The modalities of power are numerous and increasing in contemporary postindustrial society, and in principle all of them may be used for criminal purposes even if this condition is tacitly ignored. The main offenders are governments, multinationals and other types of enterprises, industrial and commercial organizations, trade unions, ideological groups and associations.

Crime also means actions committed against peace and mankind, genocide, and war crimes, actions resulting from armed conflict and military occupation, against the state, and by public order, espionage of many kinds, abuse of diplomatic and other privileges, actions against public administration and public health, political collusions involving devious criminal manipulations, illicit trafficking of persons, arms, drugs, etc., slavery and exploitation of persons, particularly of refugees amounting at present to several millions, and official discrimination among which *apartheid* is prominent.

Often the term security is used to justify the implementation of special penal laws under states of emergency—sometimes lasting long periods of time—and the detention of thousands of persons without ever bringing them to trial. The reader should consult the report on *Concepts of security at the national, regional and international levels* (A/40/553,1985) and the series issued by the Commission on Human Rights in the same year on *The Administration of Justice and the Human Rights of Detainees.* Terrorism was discussed at the seventh Congress but in an unsatisfactory way, partly due to the fact that the majority of delegates represented dictatorial regimes.

The third aspect concerns the criminality resulting from the malfunctioning of the majority of penal systems, in the developing countries often for so-called political reasons. Although penal reforms are numerous, the fact remains that with few exceptions criminal justice is dragging all over the world and that in spite of some improvements the Standard Minimum Rules for the Treatment of Prisoners adopted in 1957 are not yet applied satisfactorily. Two of the most significant indexes of such malfunctioning are the decrease in the percentage of cases cleared up by the police and the increasing number of prisoners awaiting trial. A comparative study shows that the clearing up average is often below 35 percent, and that of prisoners awaiting trial is between 20 and 95 percent of the prison population, the lowest percentages pertaining to developed and the highest to developing countries.[3] To what extent can the malfunctioning of criminal justice be regarded as part of the dimensions of crime?

The fourth area is the expansion of economic crime, the extent of which is not easily ascertained partly due to the difficulties in gathering adequate evidence and partly to the prevalence of emotional attitudes according to which economic crime is regarded as of relative importance only. It may be said that very often economic crime seriously affects not only the lives of persons but also permanently, or for long periods of time, their physical, psychological, and material living conditions.

The most often discussed modalities of economic crime are disguised monopolistic concessions or transactions prohibited by law, significant mismanagement or misappropriation of economic production or distribution in market or centralized economies, sizeable illegal import or export of capital, goods, currency, products, etc., simulated development, benefits, losses, loans, etc. against public interests particularly affecting underprivileged social groups, classes, minorities, etc., destruction or undue use of natural resources, contamination and ecological damage, and the undertaking for economic aims of industrial, chemical, or technological enterprises without maintaining protective measures in proper condition. In many cases of economic crime, national and multinational enterprises are involved, but in most their involvement is facilitated by corruption at high governmental, political, and institutional levels.

The fifth point is that crime may be committed intentionally or by negligence and that in contemporary postindustrial society so technologically influenced, criminal negligence will play an increasing role which in some cases requires severe penalties. In other words, there is a difference between industrial and post-industrial society as far as criminal negligence is concerned.

The survey shows that little is known about the dimensions of crime as a global sociopolitical phenomena. The term dimensions embraces not only offences but also victims, offenders, and costs. Victims include society victimization at the national and international levels, including costs, not only those represented by budgetary items.

The conclusions are that no national or international criminal policy will yield the expected results until the dimensions of crime are reasonably appraised; that in order to establish those dimensions sources other than governmental ones should be used provided they are reasonably reliable. Here again the United Nations should change its approach; a failure to do so shows a persistent lack of cooperation. An appraisal of the extent of crime is the only basis which will allow the determination of the amount of crime that a given society can stand without being seriously affected, i.e., what is important is to establish as far as possible a limit to the risk of crime which should be dealt with by other ways than those implicit in the administration of criminal justice. And finally, the so-called penal systems, actually a conglomerate of ministerial-administrative services, should be transformed, with due respect to human rights, into a technological system in which evidence, sentencing, and treatment are dealt with. Among other things, this means that instead of building more and bigger prisons, remote control and surveillance will be used and probation, parole, detention pending trial, etc. should also be technologically operated.

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[3] For Latin America, see *El preso sin condena en America Latina y el Caribe*, 1983, published by ILANUD, San José, Costa Rica. The inquiry covers 30 countries—Cuba did not provide any data—in some of which the average is near 70 percent of the total prison population. The 95 percent belongs to Paraguay. The situation does not differ essentially in many African and Asian countries in some of which, according to my research, the "normal" percentage is between 60 and 70. Such is the case, among others, of Sri Lanka. In the United States, inmates are about evenly divided between convicted and unconvicted prisoners in many states. See *The 1983 Jail Census* and supplementary data published by the Bureau of Justice Statistics, 1984 and 1985.

According to my research the approximate number of the common offences of homicide, serious bodily injury, sex offences, burglary, robbery, theft, and fraud committed all over the world in 1980, including a conservative average of their dark figures or unreported figures, was no less than 1,067 billion, of which about 60 percent were offences against property. The figure would be at least twice as much if other offenses previously enumerated were included.

Probably the figures will be challenged, but they are far nearer to reality than those usually used by policymakers. They also show that although the term penal system is in general use, what it means is not a system but a conglomeration of services, seldom coordinated, known as administration of justice which is becoming more and more expensive and ineffectual.

Penal system means a *systemic* arrangement of an ensemble of sectors, the functioning of which as a whole may sometimes be greater or less than the sum of all sectoral activities involved, but the performance of which is determined by interdependency which, in the case of criminal justice, is also open to a variety of factors outside the system itself. In other words, the penal system is open and not closed.

Such a conception and functioning means that criminalization, decriminalization, detection, evidence, detention, accusation, sentencing, and treatment should not be dealt with in a formalistic way and that judiciary decisions are not always the primary ones. The argument that a largely technologically operated criminal justice system will violate human rights has no meaning if account is taken that present "penal systems," owing to their frequent malfunctioning, violate them extensively. In fact, a technologically operated criminal justice system will permit better protection and redress than the present 19th century conception of it. The use of computers and system analysis will be expanded and bring into the penal system a far larger amount of crime, improve and make quicker the dispensing of criminal justice, establish accurately the limits of crime risk to be accepted in a given society, and significantly reduce the costs of crime, including those of a budgetary character.

Security and Custody

Monitoring the Federal Bureau of Prisons' Classification System*

BY MICHAEL JANUS, JEROME MABLI, and J. D. WILLIAMS

Federal Bureau of Prisons

Introduction

CLASSIFICATION has typically been referred to as the assignment of entities to previously defined groupings or categories.[1] As Gottfredson points out, the purpose of classification systems is to group together individuals"...so that each group contains members which are as similar as possible to each other and as different as possible from all other groups..." (p.3).

Historically, correctional organizations have used classification schemes for diagnostic purposes—that is, the grouping together of inmates with perceived similarities for purposes of treatment or rehabilitation. However, the evolution of correctional goals from rehabilitation to "humane control"[2] has altered the focus of classification in corrections.

The Federal Bureau of Prisons (BOP) has developed a system to assign inmates to institutions (security designation) and to various levels of supervision within institutions (custody classification) based on scales of background variables.[3] The purpose of this system is to assign an inmate to a level of security and custody most appropriate for him or her. The BOP is hoping to achieve the goals of security (for the protection of society) and humanity (for the benefit of the inmate) by maintaining control over inmates in the least restrictive possible environment.

Background

Federal inmates are assigned an individual security level (from 1 to 6) based on a total score accumulated from a number of social and criminal history variables, as well as characteristics of the current offense (see Appendix A). Once designated to an institution, the inmate begins at the highest level of supervision (custody) the institution has. There are currently four levels of custody available (community, out, in, and maximum) each requiring progressively more supervision. Custody levels inside the institution are reassigned on the basis of another scale which is based primarily on the inmate's institutional behavior (see Appendix B).

The BOP has grouped institutions into six separate security levels based on a variety of physical criteria including perimeter security (e.g. walls, gun towers) and staff-inmate ratios. There is a seventh category of security level, "administrative," which is used for those inmates with peculiar needs and houses inmates with all security level designations. Thus, inmates are assigned individual security and custody levels and institutions are grouped by security level; ideally, inmates should match the institution's security level, although this ideal is not always achieved. Hence, there is some mixture (heterogeneity) of inmate security levels at BOP facilities.

A variety of research has demonstrated the effectiveness of the Security Designation and Custody Classification System.[4]

Research concerning classification systems often becomes associated with the initial development, validation, and evaluation of those systems. Solomon and Baird and others (see *Classification as a Management Tool: Theories and Models for Decision-Makers,* published by the American Correctional Association, 1982) have emphasized the importance of continued monitoring of classifications systems as an essential component of working systems. With that in mind, we will present an overview of 4 years of data collected to monitor the Bureau of Prisons' classification system.

The Current Study

The Bureau has been collecting monthly data from each institution in the system since 1981. These data reflect the security and custody breakdown (a "snapshot" of the institution's population) as of the last day of each month, as well as aggregated misconduct information. Misconduct information reflects the number of great severity (100 level), high severity (200 level), moderate severity (300 level), and low-moderate severity (400 level)

***This article represents the views of the authors and not necessarily those of the U.S. Department of Justice or the Federal Bureau of Prisons. The article was based on a paper presented at the 1985 annual Academy of Criminal Justice Sciences meeting in Las Vegas, Nevada.**

[1] Gottfredson, Don M., "Diagnosis, Classification and Prediction" in *Decision-Making in the Criminal Justice System: Reviews and Essays*. Rockville, Maryland: National Institute of Mental Health-Center for Studies of Crime and Delinquency, 1975.

[2] Carlson, N. A., "Corrections in the United States Today: A Balance Has Been Struck," *The American Criminal Law Review*, 1976, 13 (4), pp. 615-647.

[3] Levinson, Robert and J. D. Williams, "Inmate Classification: Security/Custody Considerations," *Federal Probation*, (March 1979), pp. 37-43.

[4] See: Levinson (1980); Mabli and Barber (1983); Moss and Hosford (1982); Johnston, et al. (1984); Kane and Saylor (1983).

incident reports adjudicated at that institution during the month.[5] The purpose of this study is to use the data to describe security, custody, and misconduct trends in the BOP from 1981 to the present and also to explore possible relationships between security and custody mixtures and inmate misconduct at the institutional level. It is often useful to divide an institution's total incident report rate into that part which groups 100 and 200 level incident reports and that part which includes 300 and 400 level. This is because 100 and 200 level incidents are more important and serious than are 300 and 400 level. Additionally, 300 and 400 level reports could more easily reflect staff discretion.

Similarly, we will talk about an institution's average inmate security or custody level. When referring to an average custody level, "community custody" will equal 1, "out custody" will equal 2, "in custody" will equal 3, and "maximum custody" will equal 4. Security and Custody averages serve primarily as a research function: they are not referenced in the day-to-day running of the BOP.

Results

First, we will look at security level comparisons collapsed over all time periods. Table I illustrates misconduct and escape rates by security level. For the entire Bureau, there was an overall averge of nine incident reports for every 100 inmates every month over the time period covered (January 1981 to October 1984). There was an average of 1.35 escapes for every 1,000 inmates in the same time period.

Table 1. MISCONDUCT AND ESCAPE RATES BY SECURITY LEVEL (1/81 - 9/84)

Institution Security Level	Average Incident Reports /100 Inmates	Average Escape/1,000 Inmates
I	6.38	2.96
II	6.75	1.90
III	8.25	0.22
IV	11.09	0.08
V	9.11	0.03
VI	25.34	0.00
Administrative	11.62	0.44
Total (All Levels)	9.00	1.35

In general, the incident report rate increases with higher institution security level, lending support to the validity of the designations system. This is especially true of more severe (100 and 200 level incident) reports, as Figure 1 indicates. Administrative facilities fall in the middle to high end of the security level continuum in terms of misconduct rates, comparable to security level IV and V institutions. Escape rates are inversely related to institution security level (see Figure 2).

Security and custody patterns are illustrated in Table 2. The average inmate security level for the entire Bureau is 2.18. The average custody level is 2.31 (slightly up from "out" custody). Naturally, the average security and custody level of the population increases with the security level of the institution. This fact is further illustrated in Figure 3. At security level IV, V, and VI institutions, the average security level of the inmate population begins to differ substantially from that of the institution's (especially at levels V and VI). In fact, the inmates in security level V institutions have an average *individual* security level of 4.

Trends

Figure 4 illustrates trends in misconduct for the whole Bureau. Serious (100-200 level) misconduct rates have remained stable over the time period, while less severe

Table 2. SECURITY AND CUSTODY AVERAGES BY SECURITY LEVEL (1/81 - 9/84)

Institution Security Level	Average Inmate Security	Average Inmate Custody
I	1.22	1.57
II	1.71	2.38
III	2.90	2.76
IV	3.53	2.91
V	4.31	3.13
VI	4.89	3.71
Administrative	2.17	2.55
Total (All Levels)	2.18	2.31

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[5] Examples of behaviors falling into the various categories are as follows:

100 (greatest)—Killing, escape, taking hostages.

200 (high)—Fighting, bribery, engaging in a sexual act, destroying government property.

300 (moderate)—Refusing to work, insolence, indecent exposure.

400 (low moderate)—Malingering, possession of unauthorized property.

FIGURE 1. INCIDENT REPORT RATES BY SECURITY LEVEL

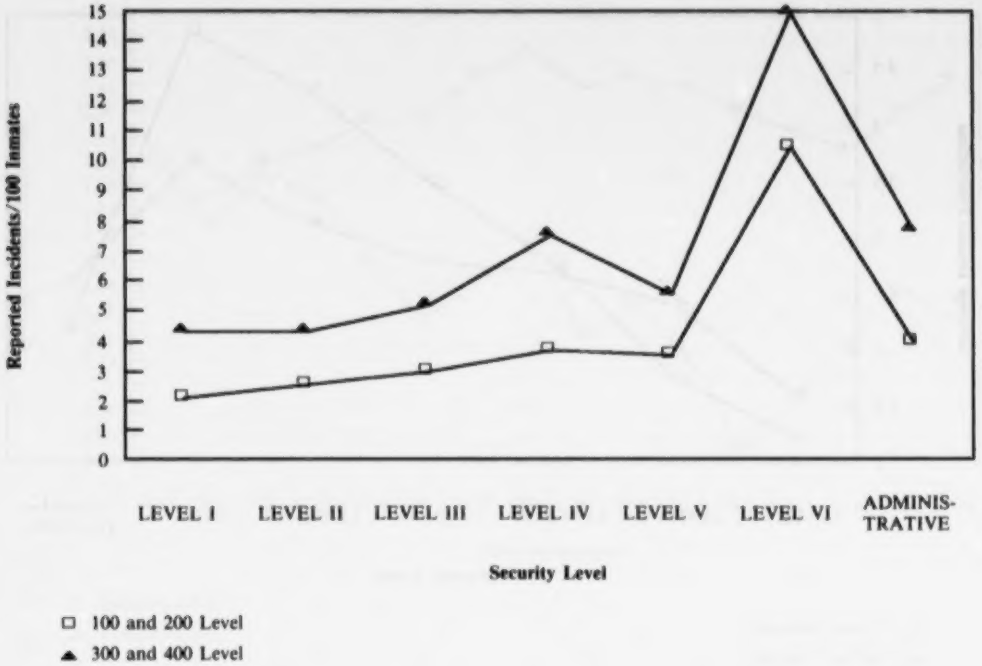


FIGURE 2. ESCAPE RATES BY SECURITY LEVEL

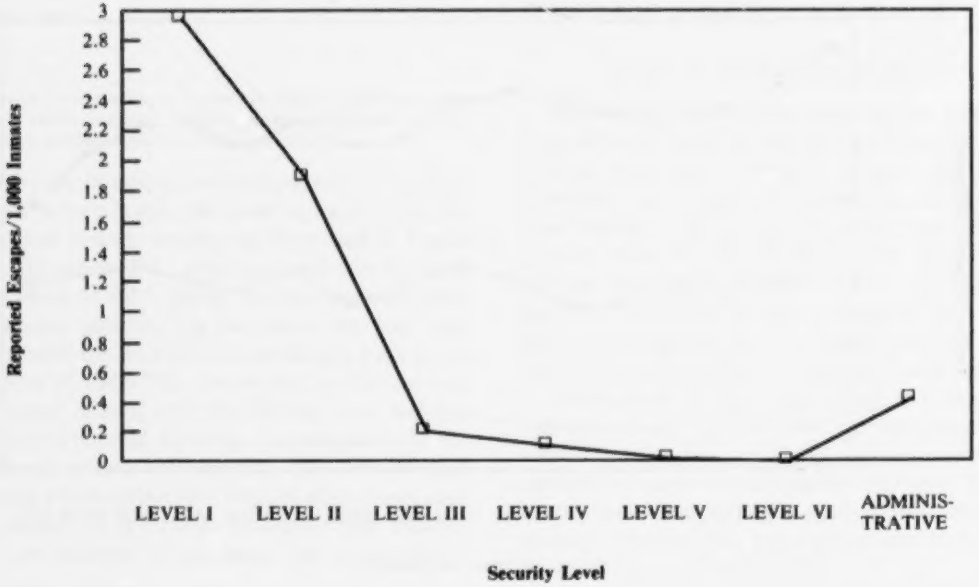


FIGURE 3. SECURITY AND CUSTODY BY SECURITY LEVEL

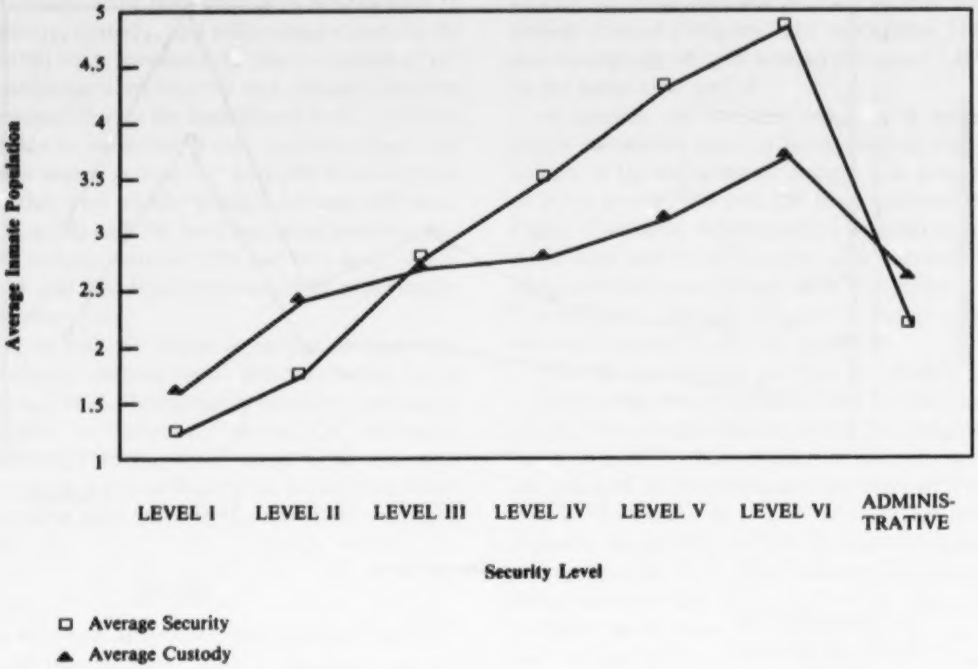


FIGURE 4. MISCONDUCT TRENDS

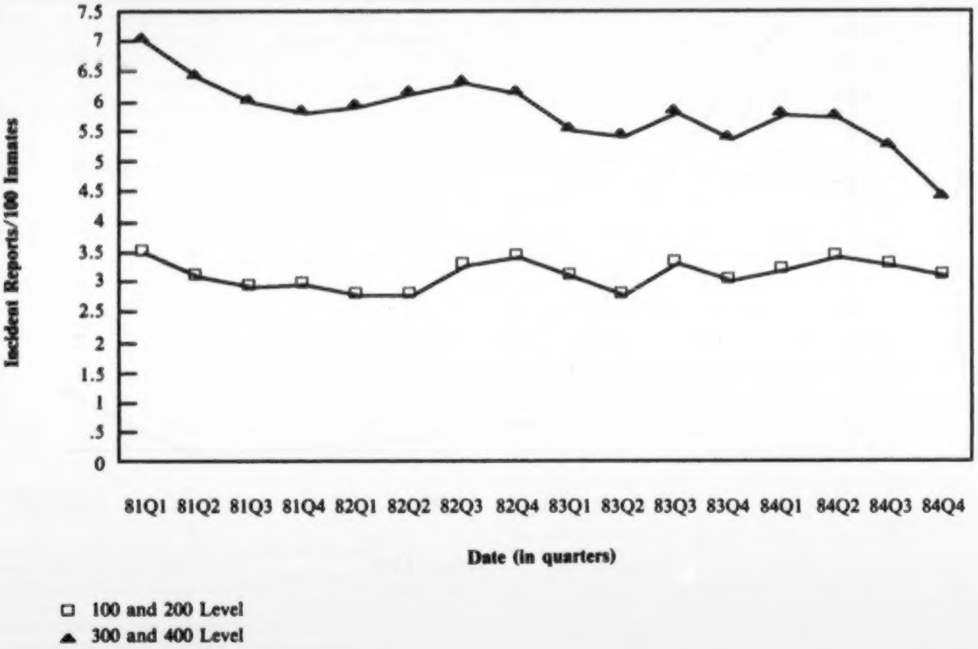
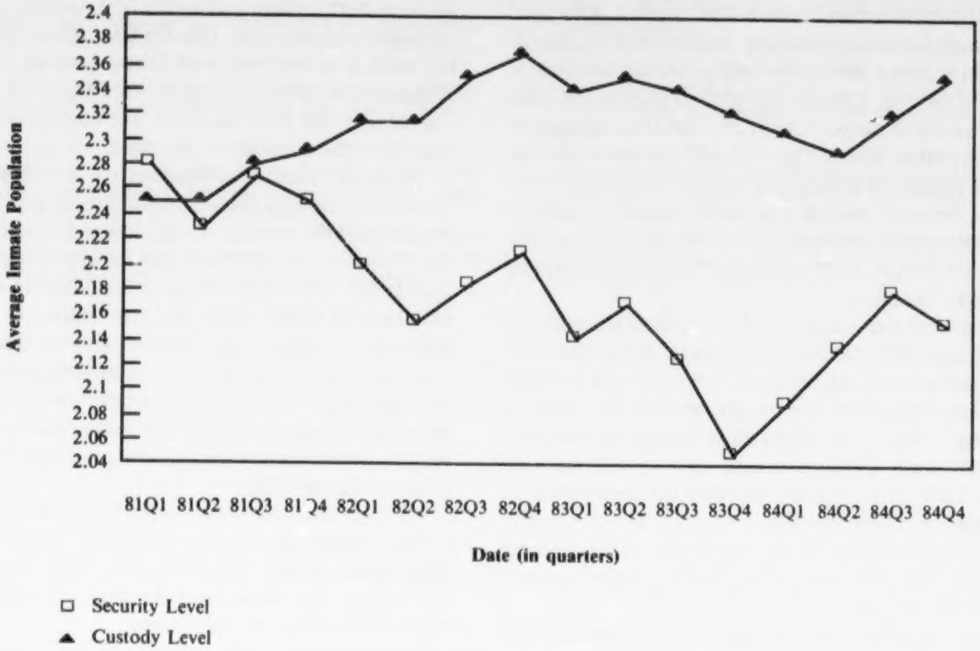


FIGURE 5. SECURITY AND CUSTODY TRENDS



(300-400 level) rates have decreased slowly but steadily. While there are many possible explanations for these trends, two immediate possibilities present themselves:

1. The Bureau's increasing emphasis on informal resolution of misconduct is resulting in less formalized response to lower level incident reports.

   and/or

2. Increasing overcrowding in Bureau facilities is shifting correctional worker's time away from the paperwork necessary to formalize an incident report to other concerns.

Alternative explanations for misconduct rate change will be explored later in this article and in future research.

Security and custody trends are illustrated in Figure 5. Average inmate security level decreased steadily until the third quarter of 1983, rising consistently since then. Average inmate custody has increased but has been sporadic through the time period, reaching a peak in the second quarter of 1982. This means that, on the average, Federal inmates coming into the Bureau have had less serious violent/criminal histories (as measured by the Security Score), at least until recently. However, average custody levels which reflect institutional adjustment have increased slightly. It is difficult to explain why custody levels did not decrease at the same time as or shortly following average security levels. One possible explanation is that inmates enter an institution at relatively high custody levels and are not considered for a custody change for 3 to 6 months. Thus, high turnover or decreasing average time served would keep custody levels artificially high compared to security levels.

Security and Custody Homogeneity

Mabli and Barber[6] found that inmates whose security level differed from the institution's were more likely to become involved in frequent misconduct. One might speculate that inmates whose security level is different from institutions' average are either more likely to be preyed upon or more likely to prey upon others. Or perhaps the security characteristics of the institution are not appropriate for the type of inmate, thus generating disruptive behavior since the inmates do not "fit in" to the routine and security of the particular institution.

We explored the following questions at the institution aggregate level: 1) Does the average inmate security and/or custody level of the *institution population* predict misconduct rates at that institution? And 2) Does the amount of *variance* in the institutions inmate security and/or custody level makeup predict the amount of misconduct at the institution?

There are some important features of this analysis worth discussing at this point. One is that this research is essentially exploratory in nature; while we might predict that higher inmate security and custody levels would be associated with increased misconduct overall, we would have no such initial expectations with regard to this effect within security levels. Secondly, we are looking at population figures. There is no need to pursue the issue of statistical significance. Finally, the data are aggregated at the institution level. Care should be taken to not generalize results to individuals or individual-level relationships. Security level 6 and administrative facilities were removed from the analyses. Both types of institutions are not typical of the daily working of the security and custody system.

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[6] Mabli, Jerome and Scott Barber, "The Effect of Inmate Security Level on Incident Report Rates at a Medium Security Federal Correctional Institution." *Journal of Offender Counseling, Services and Rehabilitation*, Vol. 8 (1/2), 1983, pp. 37-45.

Using a variety of multivariate statistical procedures, we found that institution security level is by far the most potent predictor of misconduct. Security and custody averages are, somewhat suprisingly, negatively related to misconduct. That is, once institution security level is controlled for, lower average inmate security and custody levels are associated with higher rates of misconduct of all severities. Security variance is slightly, but positively, related to misconduct rates, especially high severity misconduct; custody variance has a negligible relationship with misconduct.

We also looked at each security level separately and used only correlation coefficients between the independent and dependent measures. There are some consistent patterns in these analyses. The negative relationship between average security and custody levels and misconduct holds true at the middle security levels (especially at levels two and four), while the opposite is true at security level five, where higher average inmate security levels are associated with higher overall misconduct rates. Except at security level 2, there are moderately strong positive bivariate relationships between security and/or custody variance and overall misconduct.

Discussion

Before reviewing the results, it is important to review the security and custody scores and their implications. The individual's *security score* is composed of variables which reflect inmates' social and criminal history, as well as characteristics of the present offense. It is not unlike many scores currently being used or considered by many jurisdictions for inclusion in sentencing or parole guidelines. The *custody score* is a systematic reflection of an inmate's institutional behavior. Both scores reflect a trend in criminal justice administration which uses actuarial-type scoring procedures as guidelines to decisionmaking. Thus, research in the area of the effects of these scores on inmate management will become increasingly important.

Overall, these data have revealed a strong relationship between both inmate and institution security level and institutional misconduct. This finding reflects favorably on the validity of the Bureau of Prisons' security and custody designations system. Higher security level inmates in higher security level facilities are more likely to be involved in misconduct of all types.

However, these relationships are less clear within institutional security levels. The trends in the data suggest that at middle security levels, lower average inmate security and/or custody levels are related to higher misconduct levels. One might speculate that inmates with security and custody levels which are low relative to the institution's, are allowed more freedoms and are therefore more "at risk" to become involved in misconduct. It is possible that many of these lower security level inmates may have been transferred for disciplinary reasons from lower security levels and are contributing significantly to higher rates of misconduct.

At high security level institutions, however, higher average inmate security levels are associated with higher misconduct levels. This finding is more consistent with the notion that dangerous inmates are more likely to become involved in misconduct.

Security and custody variance, or heterogeneity, seems to be associated with higher levels of misconduct, at least at the bivariate level. This reinforces the notion that mixing inmates with diverse criminal histories, and/or records of institutional behavior, leads to more volatile environments.

The relationships outlined above did not result in a proportionally large share of the explanation of inmate misconduct rates; there is much more to the interpretation of aggregate misconduct than security and custody scores. Further research in this area should use variables which reflect age, crowding, inmate transience, and other management variables. Clearly, this research merely touches the surface of a very important topic—that is, the effects of actuarial scales and their use on the management of offenders in criminal justice agencies.

This type of research also reinforces the importance of taking a system-wide perspective on areas of interest to corrections. If the designations system described here is as effective as it seems to be, then it would be unwise to address inmate misconduct at higher security level facilities unless one took into account the designations process. Inmates were selected for those facilities specifically because they posed a higher threat of all kinds of misconduct. Inmates are transferred to those facilities because they have proven unable to adjust satisfactorily at lower security levels. In corrections, as with other organizations, as methods become more system-oriented, so too must the perspectives that managers and researchers take in evaluating those methods.

REFERENCES

American Correctional Association, "Classification as a Management Tool: Theories and Models for Decision-Makers," College Park, Maryland: *American Correctional Association*, 1982.

Carlson, N. A., "Corrections in the United States Today: A Balance Has Been Struck," *The American Criminal Law Review*, 1976, 13 (4), pp. 615-647.

Gottfredson, Don M., "Diagnosis, Classification and Prediction" in *Decision-Making in the Criminal Justice System: Reviews and Essays.* Rockville, Maryland: National Institute of Mental Health-Center for Studies of Crime and Delinquency, 1975.

Johnston, Mary, Jerome Mabli, J. D. Williams, John Hilek, and John Hurley, "Designation-Redesignation Study," South Central Region: Federal Bureau of Prisons, 1984 (mimeographed).

Kane, T. and W. G. Saylor, "Security Designation: A Validation Study." Washington, D.C.: Federal Bureau of Prisons, 1983 (mimeographed).

Levinson, R. B.; "Security Designation System: Preliminary Results," *Federal Probation*, (September 1980), pp. 26-30.

Levinson, Robert and J. D. Williams, "Inmate Classification: Security/Custody Considerations," *Federal Probation*, (March 1979), pp. 37-43.

Mabli, Jerome and Scott Barber, "The Effect of Inmate Security Level on Incident Report Rates at a Medium Security Federal Correctional Institution." *Journal of Offender Counseling, Services and Rehabilitation*, Vol. 8 (1/2), 1983, pp. 37-45.

Moss, C. S. and R. E. Hosford, "Predicting Violent Behavior in a Prison Setting." Washington, D.C.: Federal Bureau of Prisons, 1982. (Progress Reports Vol. 1, No. 2).

APPENDIX A

SECURITY SCORING

1. TYPE OF DETAINER

0 = None
1 = Lowest/Low Moderate
3 = Moderate
5 = High
7 = Greatest

2. SEVERITY OF CURRENT OFFENSE

0 = Lowest
1 = Low Moderate
3 = Moderate
5 = High
7 = Greatest

3. PROJECTED LENGTH OF INCARCERATION

0 = 0-12 months
1 = 13-59 months
3 = 60-83 months
5 = 84 plus months

4. TYPE OF PRIOR COMMITMENTS

0 = None
1 = Minor
3 = Serious

5. HISTORY OF ESCAPES OR ATTEMPTS

	None	> 15 years	10-15 years	5-10 years	< 5 years
Minor	0	1	1	2	3
Serious	0	4	5	6	7

6. HISTORY OF VIOLENCE

	None	>15 years	10-15 years	5-10 years	< 5 years
Minor	0	1	1	2	3
Serious	0	4	5	6	7

7. PRE-COMMITMENT STATUS

0 = Not Applicable
−3 = Own Recognizance
−6 = Voluntary Surrender

9. SECURITY LEVEL

2 = 7-9 points
1 = 0-6 points
4 = 14-22 points
3 = 10-13 points
6 = 30-36 points
5 = 23-29 points

APPENDIX B

CUSTODY SCORING

1. PERCENTAGE OF TIME SERVED
3 = 0 thru 25%
4 = 26 thru 75%
5 = 76 thru 90%
6 = 91 plus %

2. INVOLVEMENT WITH DRUGS AND ALCOHOL
2 = Within past 5 years
3 = More than 5 years ago
4 = Never

3. MENTAL/PSYCHOLOGICAL STABILITY
2 = Unfavorable
4 = No Referral of Favorable

4. TYPE OF MOST SERIOUS DISCIPLINARY REPORT
1 = Greatest
2 = High
3 = Moderate
4 = Low Moderate
5 = None

5. FREQUENCY OF DISCIPLINARY REPORTS
0 = 10 plus
1 = 6 thru 9
2 = 2 thru 5
3 = 0 thru 1

6. RESPONSIBILITY INMATE HAS DEMONSTRATED
0 = Poor
2 = Average
4 = Good

7. FAMILY/COMMUNITY TIES
3 = None or Minimal
4 = Average or Good

8.

PRESENT SECURITY LEVEL	CONSIDER FOR CUSTODY INCREASE IF POINT RANGE	CONTINUE PRESENT CUSTODY IF POINT RANGE	CONSIDER FOR CUSTODY DECREASE IF POINT RANGE
SL-1	11-19	20-22	23-30
SL-2	11-19	20-23	24-30
SL-3	11-19	20-24	25-30
SL-4	11-19	20-26	27-30
SL-5	11-19	20-27	28-30
SL-6	11-19	20-27	28-30

Repeating the Cycle of Hard Living and Crime: Wives' Accommodations to Husbands' Parole Performance

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Background

AFTER MONTHS of planning and dreaming, many prisoners and their wives are reunited. Although such reunions can be joyful, there are often problems and dilemmas associated with them. This article explores how prisoners' wives experience their husbands' transitions from prisoner to civilian status. Of primary concern are the difficulties encountered by wives 1) in attempting to establish the kinds of marriages they had planned during their husbands' imprisonment and 2) in attempting to support their husbands' reintegration into family life.

There is, in the literature, virtually no discussion of the impact of parole on the wives of former prisoners. However, released prisoners' perceptions of domestic and family life have been examined (Erickson, et al., 1973; Irwin, 1970; Morris, et al., 1975; Studt, 1967). These studies have consistently shown a strong positive relationship between parole success and the maintenance of family ties while in prison. This finding has held up across diverse populations of offenders (Ohlin, 1954) and in very different locales. Similar findings have been reported more recently by Erickson, et al. (1973), Glaser (1969), Holt and Muller (1972), and Irwin (1970).

Irwin (1970) specifically looked at how returning prisoners perceived domestic life, and his findings provide a possible explanation for the relationship between parole success and strong family ties. He points out that the types of support, both practical and relational, provided by families have implications for the kinds of adjustments prisoners make to their status as parolees. Specifically, families can act to buffer newly released parolees from immediate problems by providing economic, material, and social support. With this help, parolees show a better chance of succeeding on parole.

The literature also suggests that factors operating in the family setting can exacerbate parolees' problems. In his classic study, Glaser (1969) argues that "the absence or presence of conflict within the family, conflict between the parolee and his family, the compatibility of the parolee's and the family's commitments, the total character of the family's and parolee's past history together will have an important bearing on the solution of problems. . . In many instances, the family may be the major force driving the men back into systematic deviance." (Glaser, 1969, p. 245) Specific evidence indicates that post-prison success is explicitly related to discord with wives. Oddly, there is no extensive description of how wives perceive their husbands' post-prison performance.

The present article suggests that whether or not released prisoners establish conventionally oriented lives, their wives have their own personal reactions to the necessity of continuing to play a supportive role in their husbands' reintegration into the family. One significant dimension of this process is the range of accommodative strategies that wives employ to support their husbands' settling down and to deter them from resuming hard living patterns and criminal activities.

Although this research addresses a relatively unexplored area, a number of closely related bodies of work provide an understanding of 1) the ways in which lifestyles act as a form of accommodation to change and 2) how coping strategies adopted by wives are used in making relations with husbands more bearable.

From wives' accounts, we learn that accommodations are made within the context of their particular social milieu. Prisoners' wives are not only responding to social control agents, but also to the stresses and strains which stem from their sociocultural backgrounds. Hence, they are likely to draw upon culturally specific notions in determining what they consider to be the most effective accommodations. The majority of prisoners' wives are from the working class. The kinds of accommodations they make to intermittent poverty as well as to male criminality are ones suggested by working class environments.

Howell (1973) has developed a relevant typology of working class lifestyles in which he distinguishes between "hard living" and "settled living" patterns. "Hard living," he says, is evidenced by several characteristics: 1) a preoccupation with the problems and drama of day-to-day life, particularly with personal relationships; 2) chaotic work histories, in which families experience recurrent employment and unemployment; 3) marital instability, in which family members have had at least one previous marriage and an unsteady current marriage; 4) general rootlessness, in that families rent their homes and tend to move frequently; 5) toughness, in which hard livers tend to use an abundance of profanity, talk about violence, and generally act tough; and 6) heavy drinking. In contrast, "settled living" families tend to be more conventional and moderate in their approach to life with lifestyles characterized by: 1) long and stable marriages; 2) a general sense of rootedness to their communities; 3) cautiousness and conservatism; 4) moderate drinking; 5) generally steady employment among men, domestic orientation among women and; 6) a feeling of being "respectable" members of their communities and a concern with others' opinions.

Some prisoners and their wives, of course, are drawn from the middle class. Hence, Irwin's (1970) archetype of middle class lifestyles, the "square john," is also relevant here. Based on Irwin's discussion, I have created a female counterpart, the "square jane," whose lifestyle is indexed by: 1) steady employment in white collar and/or skilled blue collar occupations; 2) strong ties to her community; 3) stable family life; 4) a position as an "upstanding" citizen; 5) the acquisition of the recognized symbols of middle class status; 6) moderate consumption of drugs and/or alcohol; and 7) participation in a middle class "round of life." These typologies provide a useful starting point for discussions of the overall styles of accommodations wives and their paroled husbands adopt.

Beyond this focus on lifestyles, there has been relevant work on wives' reactions to husbands who are mentally ill, alcoholics, gamblers, or batterers. An important finding emerges from Jackson's (1962) work on family reactions to alcoholism, Yarrow, et al.'s (1955) studies of wives' responses to mental illness, Walker's (1979) work on wives' responses to battering, and Leiseur's (1977) research on wives' reactions to gambling: There is often a sequence of changes in the kinds of coping strategies families employ to deal with a member's difficulties. New accommodations are likely to occur as situations change or as family members' behavior changes.

A similar pattern emerges in the case of prisoners' wives, who often devise a range of strategies to aid in maintaining the outward appearance of smooth relationships with their hubands. Few of these patterns of accommodation are, however, permanent: They are usually modified in the course of wives' ongoing interactions with their husbands.

The accommodation literature has contributed in important ways to the present research. It provides a rich source of insights into the strategies and coping mechanisms that prisoners' wives use in coming to grips with crime and parole and making their lives more bearable. Work on lifestyles, such as Howell's (1973), has sensitized us to the ultimate dependence of forms of accommodation on subcultural and cultural patterns drawn from the larger society.

The present study, a focused examination of wives' reactions to their husbands' post-prison performance, shows how forms of accommodation are contingent, in certain respects, on the subcultures out of which prisoners' wives are drawn and on the forms of interaction between husbands and their wives.

In the following discussion of types of reorganization couples undertake and the major problems and dilemmas wives encounter in reorganizing their families, specific attention is given to the wives' perceptions of two kinds of marital patterns which their paroled husbands may establish: hard living and settled living. We then examine the ways in which wives search for accommodative strategies as well as the extent to which these strategies are effective in assisting wives to preserve their marriages, deter male criminality, or support their husbands.

The study of the ways in which wives cope with their paroled husbands' resumption of some criminal and hard living patterns is part of a larger attempt to integrate what we have learned from the growing body of research on lifestyles with our more specific knowledge of crime and parole. In this sense, the discussion of patterns of accommodation among prisoners' wives is related to the larger problem of understanding concretely how individuals go about integrating diverse social worlds.

Method

The present study is best considered as an ethnography of wives' responses and accommodations to their husbands' parole performance. It is based on material gathered about the lives of 30 northern New England women who: 1) had lived in common-law or as legally married with their men for at least 6 months before the latter were arrested; 2) were connected with men who had served at least 6 months in prison; and 3) whose husbands had been incarcerated in either of two state correctional facilities—Londonderry Correctional Facility, a traditional medium security prison, and Newport Community Correctional Center, a community-based prison. Both are located in northern New England.

A complete population listing on prisoners' wives does not exist. All prison records of both facilities were reviewed in order to define a population of "married men" who were currently incarcerated in these two facilities. This led to an identification of 42 male prisoners held at the Londonderry facility and 27 at the Newport facility who met the above definition of "married" at the time they were convicted and sentenced. Interviews were held with each of the identified prisoners, and 65 prisoners signed an agreement to participate in this study and provided me with their wives' names and addresses.

At this point, I began the process of contacting the wives. I initially did this by telephone. Of the 65 I tried to contact in this fashion, I could not locate 14. Some wives were extremely difficult to trace since they moved frequently. Five additional wives made appointments to be interviewed, but were not home at the designated time. I persisted three times and then considered these wives to be "non-contacts" as well.

The wives who were the most difficult to contact were frequently what I have termed "hard livers." Some were heavily involved in the drug subculture and a few had criminal records themselves. Seven non-contacts had left the state. I made only one attempt to contact one of these. Five wives refused to cooperate, largely due to the emotional stress dredging up unpleasant memories would entail.

The final study population, therefore, consisted of 30 white women who agreed to be interviewed. Twenty-six resided in urban or suburban areas while four prisoners' wives lived in more rural areas. The socioeconomic status of the majority of the wives could be considered working class and lower class. Only five could be considered middle class. Most were wives of prisoners serving short sentences—on average, between 6 months and a year. The bulk of these sentences were for alcohol-related petty property crimes. Few men had been convicted of crimes of violence, possession of heroin, or other more serious offenses.

The methodology of this study is based on the tradition of "grounded theory" articulated by Glaser and Strauss (1967). No pretense of statistical representativeness is intended. Indepth interviews were spread over at least a minimum of two sessions during a 24-month period to ascertain the respondents' subjective perceptions and assessment of their marriages and of their experiences with arrest and imprisonment of their husbands and, lastly, of their experiences with their husbands' release from prison.[1] The interviews ranged in length from roughly 3 hours to as many as 10 hours.[2] In addition to the indepth interviews, I have relied on such sources of data as prison records, summaries of meetings with small groups of prisoners' wives, and notes on telephone conversations with the wives.

Information from all of these data sources has been subjected to rigorous comparisons, cross-checking, and validation with respect to the experiential frame and lifespace of the prisoners' wives, themselves. In doing this, I have followed the "constant comparative" method of analysis (Glaser and Strauss, 1967). This method involves juxtaposing categories of data and searching for similarities and differences. In this fashion, "old timers"[3] have been compared to "first timers," wives with children to wives without children, "hard livers" to "settled" wives and "square janes," divorced wives to those who retained their marital ties, and wives of property offenders to wives of personal offenders. Other comparisons also have been made along a variety of dimensions.

In creating an overall image or representation of the reality depicted in the data, more or less finely cut categories and subcategories were rearranged so as to assemble together material relevant to each topic. New patterns appeared and older ones disappeared in the process of determining the final array. Thus, much of the analysis of how prisoners' wives accommodate their husbands' post-prison performance which is presented in the pages which follow is a product of the continual refinement and reformulation of a series of themes and comparisons implicit in the categories and subcategories.

Patterns of Reorganization

> There are certain things that you're not going to like about your man when he comes home from the joint. Accept it. I expected a storybook ending. I expected that I would have a Prince Charming with a 9 to 5 job and he'd leave in the morning with his lunch box and then he'd come home every night. I expected he'd be like that once he left the joint. What a complete asshole I was. I'd do it again though. - An Old Timer

Prisoners' returns to their wives are often dramatic. Of 29 men, 15 left prison for their homes and families. The time had come for couples to put into practice the plans made during the months of enforced separation.

Prisoners' wives generally have mixed feelings about their husbands' release from prison. First, they look forward to their husbands' return with eagerness. They are initially optimistic about the chances that their husbands will stay out of trouble. Second, they believe that their husbands are going to fulfill their promises made during imprisonment: to establish law-abiding lifestyles so that the women can establish their roles as traditional wives. Most wives believe that their chances are better than average that they will be able to live that way.

At the same time, they have some misgivings. First, according to nine wives, they were anxious about whether or not they and their husbands were going to be

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[1] Most interviews were conducted in wives' homes. During each interview, I was able to take notes without apparently disturbing the wives. Since a voice printout can be a valid source of identification, I decided not to use a tape recorder. My decision to hand record was thus based on the assessment that the wives are likely to be more candid than if a tape recorder were used.

[2] There was considerable variation in the number of sessions. Thirteen women were interviewed from three to as many as seven times; 12 wives were interviewed twice and 5 only once. Three factors appear to have determined the frequency and duration of interview: the willingness of wives to share aspects of their lives with me; how close they lived to the research base; and whether or not they were hospitalized during the research period.

[3] The term "old timers" refers to those wives who have experienced enforced separation more than once. "Neophytes" are those wives who were experiencing enforced separation for the first time.

"strangers"; that their husbands would disrupt the kinds of lives they had established for themselves. The source of their anxiety was the fear that enforced incarceration and separation had encouraged them and their husbands to develop in very different directions. During imprisonment, these wives reorganized their households around settled and conventionally oriented lifestyles. These wives feared that many patterns that they had established would not be satisfactory to their husbands. Second, seven neophytes and one old timer reported that they had no idea what to expect in the role of parolee and parolee's family. Wives had no sense of what their husbands would expect from them. Thus, they were likely to speculate about possible reentry problems. Finally, seven wives worried that their husbands would simply resume the cycle of unemployment, hard living, and criminal activity.

With parole or extended furlough papers[4] in hand, 15 prisoners returned home to what is usually a joyful reunion. Reunions, however, do not last forever. Afterwards, couples encounter the problems and dilemmas of reorganizing their families. Reorganization was seen by wives as essential for establishing settled and conventionally oriented lives. Common elements emerged in the kinds of reorganization couples undertook. Either they 1) settled down or 2) resumed hard living and criminal activities.

Nine wives reported that they and their men had reorganized their households within the framework of a settled lifestyle. They further reported that their husbands actively attempted to transform their identities from ex-convicts to ordinary citizens and to establish a more settled or square john lifestyle. These men frequently followed a very narrow and exacting path. For instance, they often adopted steady work patterns. When not working, they spent most of their time at home watching television, listening to their stereos, etc. If they drank or consumed drugs, they did it moderately. They looked to their wives and families for support and avoided contacts with criminally oriented friends and family members.

Six of this group reported that their marital roles were based on traditional sex roles: Their husbands continued to be the economic providers, with their wives primarily responsible for the domestic and child rearing chores. The women saw these kinds of marriages as settled or "doing good." In all of these cases, some mutually satisfying marital patterns were established. Whether or not wives had had intimate and satisying marital relations before prison, they reported that they and their husbands discovered new values in family life and established a more cooperative relationship. Husbands approved of their wives' management of the households and children during separation. In turn, these wives approved of their husbands' newly acquired commitment to a conventional lifestyle.

As the months went by, however, more wives were astonished, bewildered, and sometimes driven to despair when they learned that their husbands had resumed some old and all-too-familiar patterns they had established before prison. Shortly after release, six women reported that their husbands were "not doing too good." Three more made this observation 6 months later. Their husbands' commitments to settled ways of living had apprently been short lived; in particular, they were unemployed, associating with criminally inclined friends, staying out late, drinking and consuming drugs, or perhaps having short term extra-marital affairs.

Problems of Reentry

The major problems paroled prisoners face center upon getting and keeping a steady job. Twelve men were steadily employed shortly after they were released from prison. However, most of these men had been released from prison with no training and few, if any, employable skills which would qualify them for jobs which provide a steady income. Few prisoners actually received serious job training inside northern New England's correctional facilities or through arrangements with outside agencies. Most work within the prisons or on work release was unskilled or, at most, semi-skilled. According to wives' accounts, only three men actually received some kind of job training while serving their time.

Three men had been released from prison with no jobs in hand and remained unemployed. Their wives reported that they did not appear to be motivated to find work. The most frequent explanation given by the husbands was that they needed a "rest from prison" or that they were taking a "little vacation" before looking for work. By contrast, the three wives who worked outside their homes during their husbands' imprisonment continued to be employed. The wife who was a college student continued her studies. The remaining 10 wives continued to be housewives and kept their welfare grants as supplements to their husbands' incomes. Three arranged to have their unemployed husbands included in these grants. None of the women who remained at home were totally dependent on their husbands' incomes. Most looked to their husbands to provide for their families' economic well-being, which they saw as necessary for a settled lifestyle. Thus, all women felt that "settling down" did not simply mean spending time at home listening to the stereo, watching television, or providing them with companionship, but that it necessarily involved steady employment.

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[4] The "extended furlough" program allows prisoners to adjust to working and living within their communities while still under the general supervision of the correctional system. Extended furloughs can be revoked when prisoners violate community rules. When extended furloughs are revoked, prisoners are returned to prison to resume their sentences.

Parole, on the other hand, allows prisoners to serve the remaining parts of their sentences while living in the larger community. Parole is a privilege and can be revoked if parolees violate conditions of their parole. If it is revoked, they are returned to prison to serve the remainder of their sentences. If parolees commit crimes while on parole, they may be tried, sentenced if found guilty, and returned to serve additional terms.

By the end of the field research, 8 of 15 men were unemployed. In three cases, the reason for this was that the men had been laid off since they had been hired as temporary workers for government-sponsored or seasonal jobs. Two men quit because they really did not want low-paying, unskilled jobs under poor working conditions. The three men who were unemployed on release simply did not look for jobs.

Unemployment was a source of problems and stress for most women. Six said that their unemployed husbands would consider accepting jobs which offered them more status and prestige or that their physical ailments prevented them from searching for work. Often, they reported, the men simply avoided the subject by being home as little as possible. Contrary to what one might expect, most men did not find themselves stigmatized when seeking employment; only two women reported that their husbands' statuses as "ex-cons" interfered with their obtaining satisfactory employment.

For all six wives, unemployment meant a continuation of grinding poverty. All these wives either continued their welfare grants or reapplied when their husbands become unemployed. One wife, who received public assistance when her husband was in prison, reported that when he was released, her grant was automatically terminated. This was most acutely felt by her family, since her husband was not working.

> They stopped our welfare and medicaid and everything. He didn't earn enough money in prison to qualify for Aid to the Unemployed Fathers. . . We're at rock bottom. I've been writing bad checks to eat. I still get a small amount of food stamps. I've been working myself sick. I have to go to work whether I'm sick or not. There is only my income to feed the three of us. I can't afford to take off a day from work or we'll starve to death. I'm working and I'm responsible for Frank now, but he's not working. It hurts me bad. I make $2.99 an hour. I'm the working head of the household and I support the family. General Assistance won't help.

It is interesting to note, however, that wives whose husbands were working were not significantly better off; even if husbands were employed, their families could continue to be extremely poor. Four wives reported that their husbands' incomes were far less than what they had previously received from welfare. Moreover, wives were now not just maintaining themselves and their children, but also their husbands. However, almost all wives expected that their husbands would eventually obtain adequate employment.

By contrast, only three women did not equate unemployment with poverty. They were employed and provided the economic foundation for a middle class lifestyle. Hence, their husbands' incomes were not necessary. Another wife, whose husband had a highly skilled position in a water treatment plant, reported that her family was economically better off as a result of her husband's job and a welfare grant that covered her handicapped child.

The stresses and strains of poverty took an immediate toll on 12 wives. Moreover, the long held dreams which sustained them during enforced separation were rapidly disintegrating. Their husbands' inability to achieve one primary aspect of their dreams led to resentment among these wives:

> One of these days I'm going to be fed up. When I go back to work and he sits on his fat ass at home, I'm going to kick him out. I don't want to change him. I want the lazy bastard to work. I'm not supporting him—not anymore. I see my mother's life all over again—supporting a lazy bastard. I'll go back to nursing until I can't work there any longer.

Repeating Hard Living Patterns

As we noted earlier, most women bring dreams of home and family, of a predictable and conventional life, into the reunions. Yet for many, there is a gap between these dreams and reality. Most wives almost immediately find themselves struggling with not-so-conventional marriages. A major issue confronted by these wives is their husbands' hard living.

Wives' accounts of their lives strongly resemble those portrayed by Howell in *Hard Living on Clay Street* (1973). Five components seem characteristic of this life pattern: 1) marital instability, as evidenced by male infidelity and/or separation from their wives; 2) violence, especially wife beating; 3) heavy drinking or drug abuse; 4) intermittent and chronic unemployment; and 5) seeking adventure in criminal and quasi-criminal activities, frequent absences from home with peers, hanging out in local bars, etc.

Within 6 months, nine of the unemployed men had resumed pursuing at least two of these elements of hard living. Eight wives reported that they were most disturbed by the fact that their husbands resumed their old patterns of alcohol and drug use. Six of these wives also noted that when their husbands reactivated old prison friendships, it indicated to them that trouble was about to happen. These wives emphasized that dissociation from friends or acquaintances who are criminally involved was an important component of "going straight."

Four wives provided an explanation for their husbands' resuming their old criminal ties. They indicated that their husbands gravitated back to these friends because they believed that other people cannot appreciate their prison experiences. Thus, wives who dreamed, during enforced separation, about evenings spent in front of the television with husbands, now spent evenings alone waiting for their husbands. Husbands' "night out with the boys" all too frequently became "nights out with the boys." Four wives believed that their husbands were not only associating with questionable peers, but with women of questionable intentions.

Six wives reported that they usually resorted to nagging and complaining as a way of attempting to deal with this situation. Arguments erupted. It was then that physical assaults by husbands on wives frequently took place. No matter how severe the batterings, all wives were reluctant to inform either the police or their husbands' parole officers. They simply did not want to be responsible for sending them back to prison.

This hard living severely threatened the lifestyles wives had established during enforced separation. Yet, they continued to adjust to their husbands' problems and to the marital conflicts related to these reentry problems. They coped because they continued to believe that their husbands would eventually come around to a settled lifestyle.

Repeating Cycles of Unemployment, Hard Living, and Crime

Within 6 months, nine women reported that their husbands were involved in crime again. Nine husbands had violated at least one condition of parole—such as associating with known criminals, possession of guns, drinking excessively, and drug consumption. Six had participated in chaotic, careless, unskilled, and opportunistic crime—such as burglary, check forging, aggravated assault, or shoplifting. In all cases, these crimes were alcohol or drug-related:

> He went and got me some slacks, three pairs of shoes, a jacket, a digital clock and he got himself dungarees and jackets. I broke my sandal and he said, "I'll get you a pair of shoes."...That's Frank's way of taking care of us. It's the only way he knows.
>
> I went to the car and waited for him to come back. I told him "you're crazy!" He said that this store is the easiest and I shouldn't worry...That petrifies me. He sat Debra on top of the meat in the grocery store and wheeled her out on top of it. What would happen to the kid if he had been caught?

In another case, the husband resumed his sexual patterns, e.g., masturbating while watching couples' sexual activity on television, reading pornography, and so forth:

> It was so dumb. We had had a good steak dinner. We had decided to watch a movie on the TV. When the movie was ready to come on, he changed his mind. He wanted to watch Juke Box. Here I am all ready to watch this movie and we're going to see Juke Box. He went to get a beer and I associated beer with sex and sex with watching something like Juke Box on the TV. I immediately felt that I was back in the same old spaces. I think that Juke Box is stimulating, like sex. He said that he'd go upstairs and watch it alone and I could watch my movie down here. I felt that he wanted me to get him angry so that he could go and masturbate.

All these women were afraid that their husbands were going to return to prison. Six had become reconciled to this eventuality. Within 6 months, four husbands had had some type of encounter with the police which had not led to arrest, e.g. they were searched, questioned, warned by the police, or stopped for a traffic violation. It came as no surprise to four wives when they learned that their husbands had been picked up by the police. Two of these wives reported that their husbands' status as ex-convicts was not at issue and that the police had some other basis for suspicion. Only two old timers indicated that their husbands had been picked up by the police because of their extensive criminal records.

By contrast, six women whose husbands rigorously conformed to a settled or a middle class lifestyle, also encountered old and familiar problems. Once again, these were related to unemployment.

Parole Success and Parolees' Wives

In the early stages of reentry, there appeared to be differences in the kinds of support the 15 women provided for their husbands. All not only wanted to help their husbands to keep the conditions of their paroles, but to increase their husbands' motivation to settle down.

Wives' Responses to Settled Husbands

The six women whose husbands adopted a more settled lifestyle claimed that they were not overly concerned about their husbands resuming criminal activities. Instead, they were preoccupied with assisting their husbands to fit into a new pattern.

A year later, not one of these men had been charged with a parole violation or arrested. Although wives of these settled husbands are sure that their husbands are going to stay out of trouble, they also describe preventive strategies they employed in order to prevent any further "troubles":

> Q: Do you ever feel concerned that he's going to get into trouble?
>
> A: If I bring it up and ask, "Alfred what are you doing?" when he's been out, it would make him feel that I don't have any trust in him. I don't worry about it anyway. I don't ask him any questions about where he goes.

To reinforce their husbands' conventional behavior, these women provided their husband with socioemotional support. This kind of nurturing generally was initiated when husbands appeared to need support, patience, or love. Here nurturing means building up the men's self-confidence, to assist them in transforming their social identities, to advise them about their character defects, to listen attentively to their problems, and so forth. One young woman described how she nurtured her husband:

> I gave him a lot of positive reinforcement about his job. Anything positive that he does, I try to recognize it. When he told me about going to see the people in Burlington, I interrogated him and he got the full inquisition and I don't let him off the hook. A lot of times he talked to me and as I quiz him, he begins to see the reasons why he got involved in something. But I'm sure all this has to do with trying to rebuild his identity.

The six wives also resorted to the "pain-in-the-ass" strategy, spending countless hours reasoning with their husbands and showing them the consequences of their actions, etc. All had threatened that future nonconventional behavior would result in the loss of their wives and children. Furthermore, these wives undertook at least one of several preventive actions, e.g., not allowing alcohol or drugs in their homes, keeping track of their husbands' whereabouts and the kinds of friends with whom they were associating.

Nevertheless, these wives claimed that their husbands' successful parole performance could not be ascribed to these strategies. Instead, they saw more important factors at play. First, these husbands had returned home more stable than they were before prison. This stability, they noted, increased their husbands' determination to avoid criminal activities. Second, four wives reported that prison had equipped their men to avoid "troubles" by providing them with vocational skills and/or educational training. Some gained insights into their drinking problems and others acquired a strong distaste for prison.

Although six men had not been returned to prison for parole violations or crimes, they did not all reestablish stable marriages. Of the six, two wives filed for divorce. According to the wives, they and their husbands had drifted apart as a consequence of the changes in lifestyles during enforced separation. Many patterns established during enforced separation no longer seemed satisfactory to one or both partners and the spouses were unable to adjust. According to these women, the major issue was not whether their husbands were going to resume their "old bags," but whether they themselves could continue to maintain their independence and lifestyles. Over the months since reunion, they had grown increasingly distant from each other. Further, these wives had become increasingly indifferent to whether or not their husbands would perform successfully while on parole; their own sense of independence had assumed priority over supporting their husbands.

Wives' Responses to Husbands' Hard Living and Crime

During imprisonment, dreams and promises served as a vehicle for sustaining wives' commitments to their husbands. On release, many wives realized that their husbands were becoming increasingly preoccupied with hard living. During reentry, most wives reported that these dreams and promises became tarnished but, nevertheless, remained a vital mechanism they utilized to reinforce their beliefs in the permanence of their marriages.

In order to maintain these dreams, wives employed accommodative strategies designed to divert their husbands fro deviant behavior, often utilizing several such strategies. Sometimes they reported that they used an array of strategies until they found one that worked, at least temporarily. The strategies most frequently employed were 1) nurturing, 2) acting like "pains-in-the-asses", 3) passive distance, and 4) co-deviance.

As time went on, wives were less and less likely to respond to their husbands' hard living with nurturing. In general, old timers were less likely than neophytes to nurture their husbands. When wives engaged in nurturing, it was usually to avoid physical battering, to deal with husbands who were drunk, and to deal with the resumption of sexually deviant behavior. As in the case with wives whose husbands settled down, "nurturing," took the form of providing emotional support, listening attentively to husbands, as well as attempting to strengthen their self-confidence.

Nuturing was generally ineffective in breaking the cycle of arrest, courts, and prison. When wives tried nurturing and found it ineffective, seven of the nine turned to the "pain-in-the-ass strategy." Since all the wives had had experience with their husbands' hard living prior to prison, they know what to expect and acted accordingly. These wives resorted to playing out a full-fledged spy game. They attempted to keep track of their husbands' activities outside their homes and the kinds of friends with whom they hung out. If the men were spending household money for their own purposes, the wives might attempt to control the money, hide their checkbooks, etc. Some women also resorted to hiding the wine or whiskey bottles, drugs, knives, or the car keys, in an effort to block future moves their husbands might make. All the wives resorted to nagging, berating, and arguing with their husbands. Three wives nagged their husbands about maintaining contact with their parole officers. One wife even pinned the parole regulations on the wall so that her husband could continually see them. An old timer described why she dogged her husband:

> I just won't stand for Ruddy to be drunk. I feel good about that. Since he's been home, he's been drunk twice. And he always has an excuse for being drunk. I don't take it. I blow up. He came home drunk and he gave me a lot of crap. I told him to suffer. I said, "Just suffer!" We went to court about my daughter and after court he went out and celebrated. When he got home, I told him to suffer. And then I gave him some Digel and he got terrible sick. He suffered.

Frustrated and fearful, these wives argued with their husbands in hopes that this strategy would change their behavior. Arguments centered around their husbands' failure to provide satisfactory incomes and around their inability to fulfill their dreams for a settled life. Marital conflicts also erupted around the wives' fears that their husbands would return to prison. Accordingly, they were more likely to escalate their demands as time went on. Their increasing frustrations were often expressed in angry outbursts and statements that came as a surprise to their husbands:

> A lot of us assume this mother figure position with our men. We keep telling them all the things they can't do because they would get in trouble. We get so uptight over what they do and so fearful that they are going to get back into trouble again that we end up nagging them about all the things they shouldn't be doing. So to them it feels like they're still in prison because they have someone else who is telling them continually. And the more you tell them what to do, the more they rebel.

In five cases, the more argumentative the women became, the more their husbands got into hard living. Seven wives considered informing parole officers about their husbands' violations. Two were afraid to do so, but four actually did. They thought that parole officers could relieve them of some responsibility for their husbands' behavior and also control their husbands to the point where they would not get rearrested. Initially two old timers attempted to abide by the prison code of "no snitching." But once their husbands' behavior began to interfere with their roles as mothers, they used parole officers as a last resort.

These four wives reported that parole officers did not respond as they expected. Many wives complained that parole officers were indifferent to their situation and did not even attempt to pressure their husbands into changing their behavior. None of the men involved were returned to prison for parole violations. In only one instance did an officer put pressure on a man to abide by parole rules and regulations. Only one husband was charged with parole violation. From the wives' accounts, it appeared that parole officers were more likely to respond when an event had blown up than they were before this had happened. In one instance, the wife, whose marriage had been conflict-ridden, described how she and her husband argued at a night spot. The husband, quite drunk, damaged his wife's car when she attempted to leave. While she was staying at a friend's home, her husband called her to inform her that he was destroying their home. She promptly called the police:

> I got on the phone and he told me to get my ass home. I said, "Where are you?" He said, "I'm at your house." I told him that I was afraid of him and that I wasn't going near him. He told me to come home or he'd kill me. I told him not to come here. Then I heard all this crashing and he came back to the phone and said, "There goes your stereo, you'd better come home." Then he changed his tune and started pleading, "Please come home." And he kept going back and forth like that, from violent to pleading. He wouldn't hang up the phone. I could hear all the noise and crashing. Then he picked up the phone again and said, "Are you coming home now! I'm making a nice wreck here!" Then he said, "Okay, I'm gonna kill myself!" And he hung up. I called my neighbor Bruce and asked him to check on Tim for me. He said he would but then he came back and said that he wouldn't go in there with a 10-foot pole with all that noise. It was then I called the police.

The parole agency recommended that this man's parole be cancelled and that he be sent back to prison. His wife filed for divorce.

Separating from their husbands was not a new strategy for most wives. Flight was one seemingly logical way to control what they perceived as their husbands' failure to fulfill their expectations. All nine wives had tried separation, sometimes more than once. However, they had usually returned to their husbands within a few weeks.

Separation serves several functions for wives. First, it appears to be a way out of the cycle of arrest, courts, and prison. Second, they think that separation can teach their husbands the value of family life and, therefore, encourage them to renew their commitments to the dream of settling down. Finally, it can be used to make a strong statement that the wives will no longer tolerate their husbands' behavior.

Enforced separation contributed to wives' ability to initiate separations. During their husbands' imprisonment, they saw how manageable life could be without them. This encouraged wives to believe that their husbands were "luxuries" they could no longer afford:

> Q: Are you planning to leave him?
>
> A: I have my own furniture and I still have welfare. I don't need no guy. I can live without a guy. It doesn't bother me anymore. Him being in jail so long. He's been in and out of jail these 7 years. I'm used to living without a guy.

All these ways of acting like a "pain-in-the-ass" usually bring some relief. But they also yield only temporary results. For a period of time, household money is more effectively controlled. For varying periods, husbands are reminded that they can be returned to prison for parole violations. Some stop their "troublesome" activities. Yet the costs of constantly scolding are high. When wives employ this strategy, their husbands become increasingly resentful, further alienated from their wives, and eventually resume hard living.

When their husbands did respond in these ways, five wives then reverted to another strategy: passive distance. These wives were likely to behave like women in classical literature: throw up their arms to the sky and bemoan their fate. By withdrawing, the women reported, they could not communicate with their husbands about pressing household concerns or dissatisfactions with their activities. Instead, they become absorbed in themselves and their children, kept their mouths shut, and did not attempt to interfere with their husbands' enterprises, or have any knowledge of them. They seldom questioned the men about their associates or "business" activities. They withdrew whenever their husbands brought drugs, stolen goods, criminal associates, etc. into their homes. By withdrawing into silence, these wives could avoid arguments which might lead to violence. However, in assuming this coping strategy, they once again encountered their husbands from a position of perceived powerlessness:

Q: How are you trying to work things out?

A: Mostly, I keep my mouth shut. And I'm not a person to keep my mouth shut. He comes and goes as he wants. When he is home, we sit here at night and we don't talk. I'm doing this for the kids. I don't want the kids without a father. I was brought up without a father.

Once the wives employed this strategy, they had given up any responsibility for their husbands' actions; as far as they were concerned, their husbands were out of their control.

Wives reported that they derived certain satisfactions from employing passive distance. It allowed them to control the kind of information they could acquire about their husbands' activities—information which might possibly threaten their perceptions of their husbands as "good" guys. Wives generally attempted to observe only what they and their husbands deemed safe. Passive distance also reinforced the wives' determination to preserve their marriages. By acquiring scant information about their husbands' hard living and criminal activities, they could consolidate themselves in their roles as mothers and put away those parts of their roles as wives that would potentially threaten the stability of their marriages. When their men continued to pursue hard living, for instance, the wives intensified their activities as home managers, as disciplinarians for the children, and as decisionmakers: they become "domestic controllers." As wives, they held on to their obligations to service their husbands: they fed them, did their laundry, kept their homes according to their husbands' standards, and had sexual intercourse with them. What the wives derived from this strategy, then, was the illusion that husband-wife-children roles were viable and intact.

One of the least frequently employed strategies was co-deviance. To preserve her marriage, one women resumed the pattern prior to her husband's arrest: drinking heavily with him and issuing bogus checks to raise money for alcohol and drugs. Co-deviance allowed this wife, once again, to normalize her husband's behavior by joining him in his marginal status. Finally, one wife hoped to deter her husband from participating in criminal activities by independently initiating her own.

Consequences

Rearrest therefore came as no surprise to the wives involved. Of the nine husbands who gravitated towards hard living, seven were arrested again. Five of these husbands had subsequently been imprisoned, while two had charges dropped. All these men and their wives were old timers, except for one neophyte who was instrumental in having her husband's parole revoked.

Discussion

The present article complements earlier research on parole performance of married prisoners by providing prisoners' wives perceptions of reentry problems and elucidating those problems which frustrate attempts to support paroled husbands. Prior to their husbands' release from prison, the majority of wives expected that their husbands' criminal activity was a "thing of the past" and that they were ready to settle down, obtain jobs, and provide adequate incomes to support their wives and children. Reentry, however, presented wives with some difficulties in establishing stable and conventional lifestyles. It is important to note that the problems encountered by prisoners' wives, almost universally, are reported as stemming from their husbands' "failures" to establish settled lifestyles for themselves. Given this, their husbands' unemployment is most worrisome for the women. When unemployment is combined with such elements of hard living as financial irresponsibility, drinking and drug habit, physical assaults and crime, then there is cause for the women to be alarmed. These "failures" on the part of their husbands, as perceived by the wives, can be seen as a threat to the settled lives that they generally established for themselves during imprisonment. Upon perceiving their husbands gravitating back to their "old tricks," all these women were afraid that their husbands would return to prison. These findings are consistent with observations that unemployment is a crucial issue in parolees' post-prison performance[5] and further show that unemployment is also a crucial issue for wives of parolees.

As previously noted, several studies have indicated that post-prison success is associated with marital discord (Glaser, 1969; Irwin, 1970; Morris, et al., 1975). From the wives' accounts, we learn that there are two significant factors which contribute to marital discord: 1) specific patterns of household reorganization and 2) accommodative strategies adapted by wives. After their husbands' release from prison, reorganization was seen by the wives as essential for establishing settled and conventionally oriented lives. It appears that couples undertake reorganization either by settling down or by resuming a hard living lifestyle with criminal activities.

Most women, as noted earlier, expected their husbands to establish settled lifestyles after their release. Within 7 months, 9 of the 15 men were unemployed and gravitating back toward their pre-prison patterns: hard living and crime. Wives quickly moved toward the "pain-in-the-ass" accommodative pattern in order to deter their husbands from further hard living and crime and to encourage them to reintegrate into their households. Arguments most likely erupted between spouses whenever wives used this strategy. When other strategies proved futile, many wives shifted towards passive distance.

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[5] See, for instance, Erickson, et al., 1973; Glaser, 1969; Morris, et al., 1975; Studt; 1967.

In contrast, some wives reported that their households had been reorganized on the basis of settled patterns of living. Their husbands were steadily employed or highly motivated to find work and they conformed rigorously to a settled lifestyle. There was wifely support for settling down. To reinforce their husbands' conventional behavior, these wives nurtured their husbands and less frequently prodded them.

The findings clearly indicate that none of the strategies reported were as effective as wives anticipated they would be. Wives do not appear to have much influence on whether or not their paroled husbands participate in criminal behavior, get rearrested, and returned to jail. At best, wives were able to achieve a momentary attenuation of some of the hard living or criminal activity they found most difficult to cope with. The majority experienced an overwhelming sense of powerlessness as a result of trying to deal with their husbands during this stage in their lives. Linked to this was a sense of inevitability about their husbands "getting into trouble with the law." This undermined the effectiveness of the strategies they adopted and made the task of steering the men away from criminal acts and hard living—and thereby preserving their marriage—even more difficult than it might have been.

Significantly, it appears that households which are reorganized around husbands' departures from settled patterns are likely to be conflict ridden since wives most frequently respond by acting like "pains-in-the-asses." Within this context, a variety of researchers have specifically noted that the failure rate for parolees is more than 10 times higher among those reporting conflict in their homes than among those whose homes are not conflict ridden. As noted earlier, this study lends credence to this finding in that marriages where husbands are living hard are likely to be conflict ridden. However, while hard living lifestyles are characterized by conflict ridden marriages, it appears that, in many cases, it is the hard living which precipitates the conflict, rather than the reverse. Further marital conflict can then encourage further norm violating activity by husbands.

It should be noted that much of what we have observed here about the texture of the relationships between parolees and their wives is not unique. It is likely that their patterns of interaction may constitute only one specific example of a more general type of marital relationship. There is an increasing body of literature that describes the kinds of reactions that wives formulate toward husbands who pursue some deviant lifestyle. The findings reported here are consistent with what we have learned about the family lives of alcoholics and the mentally ill, gamblers, and so on. The accommodative strategies utilized by prisoners' wives are not much different from those employed by others, e.g., the "pain-in-the-ass" strategy and nurturing.

Finally, wives' perceptions of their husbands' parole performance is consistent with the perspectives of "traditional" women who endure their marriages no matter how unsatisfactory they may be. This orientation is clear in wives' attitudes towards the roles that women, in general, ought to play within marriage. They readily accept its "permanence," the view that a "woman's place is in the home," that men ought to be the breadwinners, and that males ought to be heads of their households. Their marital expectations are similar to those of other women from similar social backgrounds: stable, conventional lifestyles. They want their husbands to work. They want neat and clean houses. They want material goods. They want companionship. Unfortunately, neither they nor their husbands have, as a rule, the kind of skills which would enable them to pursue this kind of settled living. Instead, they often find themselves living hard: Hard living provides men with a means of avoiding the pressures and difficulties involved in "settling down."

Future investigation of the parole system might benefit from analysis not only of how parole affects prisoners, but also of its impact on the wives and families of parolees. The present findings provide some important insights into these issues—but a great deal remains to be done. Wives' accounts reveal that the men who do and those who do not do well on parole make their own adjustments regardless of the kinds of support wives provide. Within this context, we have also noted that the wives display a remarkable variety of coping strategies. This variety suggests the need for further study to elucidate more fully the range and effects of such accommodative modes not only on the husbands but on the wives themselves. We therefore need a closer look at the extent to which some strategies must be more satisfactory than others, at least in terms of the wives own well-being and the extent to which they function to reinforce the wives' commitments to their marriages and to "keeping the family together."

REFERENCES

Bowker, L. *Beating Wife-Beating*. Lexington, Massachusetts: Lexington Books, 1983.

Erickson, R. J., Crow, W. J., Zurcher, Jr., L. A. and Connett, A. V. *Paroled But Not Free*. New York: Human Sciences Press, 1973.

Glaser, B. G. and Strauss, A. L. *The Discovery of Grounded Theory: Strategies for Qualitative Research*. Chicago: Aldine, 1967.

Glaser D. *The Effectiveness of a Prison and Parole System*. New York: The Bobbs-Merrill Company, 1969.

Holt, N. and Miller, D. *Explorations in Inmate-Family Relations*. Sacramento: Department of Corrections Research Division, 1972.

Howell, J. T. *Hard Living on Clay Street: Portraits of Blue Collar Families*. Garden City, New York: Doubleday Anchor Books, 1973.

Irwin, J. *The Felon*. Englewood Cliffs, New Jersey: Prentice-Hall, 1970.

Jackson, J. K. "Alcoholism and the Family." In D. J. Pittman and C. R. Synder (Eds.), *Society, Culture and Drinking Patterns*. New York: John Wiley and Sons, 1962: 472-492.

Lemert, E. M. "The Occurrence and Sequence of Events in the Adjustment of Families to Alcoholism." *Quarterly Journal of Studies in Alcohol*, 12 (1960): 679-697.

Lesieur, H. R. *The Chase: Career of the Compulsive Gambler*. Garden City, New York: Doubleday Anchor Books, 1977.

Morris, P., Beverly, F., and Vennard, J. *On License: A Study of Parole*. London: John Wiley and Sons, 1975.

Ohlin, L. E. *The Stability and Validity of Parole Experience Tables*. Ph.D. Dissertation. University of Chicago, 1954.

Pagelow, M. *Woman-Battering: Victims and Their Experiences*. Beverly Hills: Sage 1981.

Studt, E. *The Re-Entry of the Offender in the Community*. Washington, D.C.: United States Department of Health, Education and Welfare, 1967.

Walker, L. *The Battered Woman*. New York: Harper and Row, 1979.

Whalen, T. "Wives of Alcoholics." In W. A. Rushing (Ed.), *Deviant Behavior and Social Process*. Chicago: Rand McNally, 1969: 301-306.

Yarrow, M. R., Clausen, J. A. and Robbins, P. R. "The Social Meaning of Mental Illness." *Journal of Social Issues* 11 (1955): 6-10.

Community Service Sentencing in New Zealand: A Survey of Users

BY JULIE LEIBRICH, BURT GALAWAY, AND YVONNE UNDERHILL*

Introduction

COMMUNITY SERVICE, as a sentence for offenders, was introduced in New Zealand in February 1981. Judges are empowered to sentence offenders to complete from 8 to 200 hours of unpaid service to a charitable or governmental organization. The sentence may be imposed upon any offender convicted of an imprisonable offense provided the sentence is appropriate given the offender's character and personal history meet qualifications, the offender understands the purpose and effect of the sentence, the offender consents to the imposition of the sentence, and suitable service is available. The sentence is administered by the Probation Division of the Department of Justice. In 1981, 1,772 community service sentences were imposed, in 1982, 1,991, in 1983, 2,438, and in 1984, 2,436.

The introduction of the community service sentence provided New Zealand courts with a fifth sentencing option; in addition to community service the repetoire includes imprisonment, periodic detention—both residential and nonresidential—fine, and probation. Originally periodic detention in New Zealand involved weekend confinement combined with public service work. Residential periodic detention centers continue to exist, but no new residential periodic detention centers are being established, and the existing centers are gradually being phased out in favor of nonresidential periodic detention in which the offender is required to report at 8 a.m. on Saturday to do public service work as a part of a work crew under the supervision of a Department of Justice staff person. Periodic detention work is normally manual labor—such as conservation work, park cleanup, hiking trail maintenance, and so forth—which can be completed by a group of offenders working under supervision. The policy shift from residential to nonresidential periodic detention was based on the comparatively high cost of the residential version and the lack of evidence that residential periodic detention was any more effective in reducing recidivism than nonresidential periodic detention. Sentences to periodic detention are made in months (usually 3 to 4); a periodic detention sanction is considered a severe penalty. The community service sentence in New Zealand differs from nonresidential periodic detention; community service is tailored to the individual by placing the offender with a government or charitable organization where he or she provides unpaid service individually, as would any other volunteer, rather than as a part of a supervised group of offenders. Community service in New Zealand does not include laboring on a work crew.

Responsibility for administering the community service sentence rests with the Probation Division of the Department of Justice. Probation services in New Zealand, a country of about 3.2 million people, are provided by the national level of government through 35 probation districts. All probation districts have designated a probation officer to be responsible for organizing the community service activities. In the larger districts, organizing community service is a full-time responsibility, but in smaller districts the functions are combined with other probation activities.

This material study of the implementation of the community service sentence in New Zealand was conducted by carrying out structured interviews with probation officers, judges, offenders sentenced to community service, and community service sponsors (representatives of the government or charitable organizations which provided service opportunities for offenders sentenced to community service). The purpose of the study was to determine the extent of agreement or disagreement on the purpose and aims of the community service sentence, to discover the ways in which the sentence was being implemented in the various probation districts in New Zealand, to discover the benefits these groups of respondents perceived of the community service sentence, to find out the extent to which they were satisfied with the sentence, and to develop recommendations for the continued development of the community service sentence.

Methodology

Data were collected March through May 1983 by conducting structured interviews with 42 probation officers, 65 sponsors, 68 offenders, and 11 judges from 7 of the 35 New Zealand probation districts. The probation districts were selected purposely to provide balance on the dimensions of population served, geographic area coverage, number of probation staff, number of com-

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munity service sentences administered, and rural or urban district. Initially eight districts were included in the study group, but weather-related travel difficulties forced dropping the Rotorua District. Unfortunately, this was a district with a large Maori population and resulted in a reduction of the proportion of Maoris in the offender study group to 24 percent, lower than expected (Leibrich, Galaway, Underhill, 1984). The seven probation districts in the final study group were Auckland, Dunedin, Gisborne, Invercargill, Levin, Lower Hutt, and Nelson.

The population of 28 judges included all judges who had chambers in a court attended by each of the probation districts or, in the case of one probation district where no judge had chambers in the district, the two most recent visiting judges. A one in two random sample was taken of the judges; 79 percent (11) of the 14 randomly selected judges took part in the survey. A satisfactory interview time could not be scheduled with the three judges who were not interviewed. Seventy-three probation officers worked in the seven districts, including seven district probation officers (the chief probation officer for the district) and six community service supervisors (in one rural district the district probation officer also served as the community service supervisor). The probation officer sample included all of the district probation officers, all of the community service supervisors, and a one in two random sample of the remaining 60 probation officers. Interviews were completed with 42 of the 43 probation officers in the sample; one officer was away at the time of the study and could not be reached for interviewing.

A total of 321 organizations had acted as a community service sponsor during the past year for at least one offender. A one in four random sample of sponsors was drawn, and interviews were held with 81 percent (65) of the 80 sponsors in the sample. Five organizations could not be contacted, for five others the person who had had experience with the scheme had left the organization, a suitable interview time could not be scheduled for three sponsors, and two sponsors were unwilling to take part.

The offender population was 292 individuals who had been sentenced to a community service sentence in a court attended by one of the selected district probation offices during an 8-month period and who served their hours in that probation district. The sample period ended a month before interviews took place and included some people who were still serving their hours and some who had completed their hours. A one in two random sample was taken from this population. Interviews were completed with 47 percent (68) of the sample of 146 offenders. Forty-four offenders could not be contacted, 16 were not willing to be interviewed, 9 did not appear for an arranged interview, and suitable interview times could not be arranged for 9.

Good response rates of offenders given community service are difficult to obtain. Flegg (1976) secured a response rate of 48 percent, Pease (1975), 37 percent, and Hermann (1981) was forced to abandon a planned sample of a 1-year followup survey because she was able to contact only 10 percent of the offenders. Offender low response rates may have affected the representativeness of the data. The respondent and nonrespondent groups were compared on all available measures: age, sex, ethnic group, offense, length of community service sentence, additional sentences for the offense (fine, driving disqualification, probation), sentence status at the time of the survey (current or terminated), the number of hours left for current sentences, the type of termination for terminated sentences, how long since the person was sentenced, and the number of placements arranged. Respondents were older than nonrespondents (t-test = 2.42, df = 144, p .05), the mean age being 27.7 years and 24.2 years respectively. More respondents (75 percent) than nonrespondents (51 percent) were currently serving the sentence (Chi-square test = 7.72, df = 1, p .01), had been sentenced more recently to community service than the nonrespondents (Mann-Whitney U test, Z = 2.22, p .05), and had a median of 23 weeks since being sentenced as compared to 25 weeks for nonrespondents. Of those who had terminated the sentence, all of the respondents had completed the hours, whereas 28 percent of the nonrespondents were terminated for another reason (Chi-square test = 4.19, df = 1, p .05). For all but one case the termination was the result of reconviction for further offenses. There was no statistically significant difference between the groups on any of the other measures recorded. The nonrespondents were younger, had been sentenced less recently, and were not as likely to successfully have completed the sentence.

Sampling was done by first generating lists, randomly selecting a starting point, and then proceeding through the tests taking every second (or fourth) name. This procedure assured proportional representation in the sample of names from districts with small numbers. The seven districts were visited during April and May 1983 by a team of three experienced interviewers. One interviewer had primary responsibility for the interviews of probation staff and judges, one for offenders, and one for sponsors, although to equalize work loads, some offender and some sponsor interviews were completed by a second interviewer. The interviews with probation officers, offenders, and sponsors were arranged by the probation officer with responsibility for community service in the district. Judge's interviews were arranged with the help of the Chief District Court Judge. An interview was requested with each probation officer in the sample. An introductory letter requesting an interview was sent to each sponsor through the local probation officer who followed up 2 or 3 days later to schedule an interview time. The probation officer responsible for community service sent an introductory letter to each offender; the letter included a stamped self-addressed reply card to be returned to the probation office stating whether or not the offender was willing to be interviewed. No further approach was made if the offender was not willing, but when a card was not returned, attempts to set up an interview were made by the probation officer and then by the interview team at the time of the visit. Each interview took approximately 1 hour and was usually held during the day. Judges were interviewed in their chambers; probation officers and the majority of offenders, at the district probation office. Some offenders were interviewed at home, and in two cases offenders were interviewed in prison. Nearly all sponsors were visited at work or home to conduct the interview. In two cases an interpreter was used to conduct offender interviews. In one case the interview with a probation officer was conducted by phone.

Structured schedules were designed for each group of respondents with questions common to each group as well as questions about each group's specific area of experience. The questionnaire evolved from questionnaires in the same research area (Bradshaw, unpublished; Harris, 1979; Oxley, 1984; Polonoski, 1980), suggestions from colleagues, earlier interviews with sponsors and probation officers, and discussion among the interview team. After revisions and a pilot test of the schedule, final versions were produced (Leibrich, Galaway, Underhill, 1984).

Most probation officers had experience in making community service recommendations, although only those officers with direct responsibility for the sentence were fully experienced in its day-to-day operation. Sponsors' average involvement with the sentence was 16 months, and over half had experienced more than one placement. Offenders had been sentenced to an average of 101 hours and had served an average of 58 hours at the time of the interviews. Although 71 percent of the offenders had served a previous sentence, only two had a previous community service sentence. Judges had an average of 7½ years' experience on the bench, and most reported using community service sentences only infrequently.

Aims and Selection of the Community Service Sentence

Questions were designed to secure respondents' views of the aims of the community service sentence, the community service sentence's relationship to other sentences, and the offenders who would be suitable for such sentence.

The Aims Of the Sentence. All respondents were asked what they saw as the aims of the sentence and whether they thought those aims were being accomplished. Five groups of aims were identified from the responses: providing benefit to the community (just doing work or paying back); providing benefit to the offender (by discipline, the development of new work skills or interests, mixing with different people, personal growth, or simply by minimizing disruption in their life while serving a sentence); fostering community-offender integration; punishing the offender; and providing an alternative sentence (generally or specifically as an alternative to imprisonment). Respondents identified one or more aims. Providing benefit to the offender was the most common aim and was mentioned by 58 percent of the respondents. Providing benefit to the community was mentioned by 50 percent, providing an alternative sentence by 35 percent, community-offender integration by 26 percent, and punishing the offender by 22 percent. Judges and probation officers were more likely to mention benefits to the offender and benefits to the community than were sponsors and offenders. Providing an alternative sentence was the most common aim identified by probation officers and was identified by half of the judges. Punishment was more commonly mentioned by judges than the other groups and mentioned least often by probation officers. Ideas of community-offender integration were most likely to be mentioned by the probation officers and least likely by the offenders.

Most respondents were optimistic that the aims they mentioned were being accomplished by the sentence. Probation officers said yes or gave a qualified yes for 80 percent of all the aims they mentioned; sponsors thought 94 percent and offenders thought 91 percent were being accomplished. Judges, however, felt that only 59 percent of the aims they mentioned were being accomplished.

Benefit to the community was almost always perceived as being accomplished, with the offenders being most sure of this. Benefit to the offender and community-offender integration were also often seen as successful aims, although the probation officers frequently gave qualified replies. Most respondents, except for the judges, were sure that punishment was being accomplished by the sentence and most (the probation officers least of all) felt that community service successfully provided a general alternative sentence.

Community Service as an Alternative Sentence. Diverting people from prison sentences is one of the official objectives of the community service sentence. There has been some doubt both in New Zealand (Fisk, 1982; Pinder, 1981; Steward, 1982) and in other countries with similar sentences and aims (Austin, 1982; Beha et al., 1977; Harland, 1980; McEwan, 1978; Willis, 1977) about whether such a community-based sentence is actually used for people who would otherwise have gone to prison. When asked if they saw reducing the number of people in prison as an aim of the community service sentence, 70 percent of the probation officers and 79 percent of the sponsors said yes, compared to 36 percent of the judges. Many of the probation officers and judges who said yes expressed some doubts about whether this was a reasonable aim. In the general responses concerning what people saw as the aims of this sentence, the provision of an alternative to custodial sentences was the aim least often seen as being accomplished.

What sentence did people think had been averted by community service based on recent cases from their own experience? When a sponsor knew the offense which had resulted in the most recent placement, he or she was asked to say what sentence they thought the person would have been given if community service had not existed; 47 percent of the sponsors thought the person would have gone to prison. Probation officers were asked the same question about the two most recent offenders from their caseload who had received community service sentences. Prison was thought to have been averted in 37 percent of the cases recalled. Judges were unable to recall enough cases to make even a rough estimate. Offenders were asked what sentence they were expecting to get; 54 percent had expected to get a sentence involving prison.

Probation officers and judges were asked how they viewed community service in relation to other noncustodial sentences. Questions about the distinction between offenders suitable for a fine versus community service and periodic detention versus community service indicated considerable divergence of opinion about where community service stands in relation to those two sentences. Although most discussed community service as falling between a fine and periodic detention, some described community service as less serious than a fine while others maintained it was more serious than periodic detention.

The ability to pay a fine was the most common consideration among probation officers when distinguishing between offenders suitable for a fine and for community service, although several also said that a fine should be used for lesser offenses. Most judges said they used community service rather than a fine when a fine would cause hardship or could not be paid.

Probation officers gave a wide range of reasons for recommending somebody for community service rather than periodic detention, including both practical reasons why periodic detention could not be served and positive gains from serving a community service sentence. Probation officers were in disagreement about the weight of the severity of criminal history and offense in distinguishing between community service and periodic detention. Most judges said they used community service rather than nonresidential periodic detention when periodic detention was not available or would cause hardship. Positive reasons for choosing community service (such as the offender being able to handle the flexibility of community service or having abilities to contribute to the community) were only rarely voiced by the judges.

Selecting Suitable Offenders. A community service sentence usually stems either from a request by a judge for an assessment to be made of whether the sentence would be suitable for a particular offender or from a suggestion in a probation officer's report. Judges and probation officers, therefore, were asked how they decided whether or not an offender was appropriate for this sentence.

Probation officers sought indications of personal and social stability such as a good employment history, stable domestic situation, reliability, community ties, a successfully completed previous community-based sentence, age or maturity, or ability to fit into a voluntary organization. Willingness and motivation were also sought by some probation officers, as were a moderately serious offense or a real threat of facing imprisonment. Judges most commonly looked for no criminal history or a short one without violent crimes, but a moderately serious offense and indications of personal and social stability. The offenders' skills, interests, and possible gains from the sentence were secondary considerations for both the probation officers and judges.

Instability, addiction or personality problems, lack of willingness or motivation, and a serious offense or serious criminal history were the most commonly mentioned things that made a person inappropriate for the sentence according to the probation officers. A personality problem, a very serious offense, or long criminal history and social instability were identified by judges.

Seventy-one percent of the sponsors had some qualifications about the kind of person they would accept. Specific job skills, interest in the organization, and general positive personality characteristics were actively sought by these sponsors. Offenses involving violence, sex, or dishonesty were specifically not acceptable to some sponsors. Almost a third of the sponsors said they were prepared to take anybody at all, and only 15 percent had ever turned somebody down—usually because of lack of work at the time.

Administration of the Sentence

Making the Placement. In some districts the probation officers assumed responsibility for finding sponsors and spend time recruiting and screening sponsors who are

matched with offenders. In other districts offenders were expected to take most of the responsibility for finding a suitable sponsor.

Approximately three-quarters of the probation officers usually involved the offender in finding a suitable match with about half of them asking the offender to find their own placement. About half of the offenders interviewed said they had been asked if they knew of a place where they would like to do their community service; in half of these cases they were placed with the sponsor they had suggested. The rest were either given a choice from a list supplied by the probation officer or else had a sponsor chosen for them. Where offenders were expected to be actively involved but did not know of a possible sponsor, they were asked to find one. Some found this a difficult task, but others said they liked the chance to find their own sponsor.

Decisions about a sponsor's suitability were generally made by senior probation staff or those with direct responsibility for the sentence. They looked for sponsors who could give adequate supervision and provide sufficient and suitable work. Some considered the sponsor's attitude and expectations of offenders or their understanding of the sentence. Some took into account whether the placement was likely to benefit the offender. Sponsors had rarely been turned down, but where this had happened, it was because of lack of suitable supervision, inappropriate connection with the offender, the organization not meeting the legal nonprofit requirement, potential existing for exploiting the offender, or a sponsor believing that the sentence should be punitive.

Although 78 percent of the sponsors had been aware of the community source program before they were recruited, very few of them had made the first approach to be involved. Two-thirds had been asked by probation officers, and nearly a quarter had been approached by offenders. The three most common reasons sponsors agreed to become involved were because work needed to be done, to help offenders, or because of a good relationship with the probation agency. Several said they had a general commitment to community involvement. Several believed that the community service scheme could foster mutual benefit.

Usually sponsors had not met the offender before the first meeting in connection with the placement, although in approximately a quarter of the cases the sponsor either knew or knew of the offender. Eighty-two percent of the sponsors had met the offender before plans for the placement were final. The information sponsors had before they met the offenders varied enormously. Sponsors were usually dependent on the probation officer for information about an offender. About a third of the sponsors said they knew virtually nothing about the offender. Over half knew details of the offender's personal circumstances, and over half had been told the offense. About a quarter knew whether the person had a criminal history, and about the same number said they were informed about the person's psychological state. When asked what they felt they needed to know about someone who might be placed with them, about a fifth did not want any information at all, another fifth wanted very little, another fifth wanted details about only one particular offender aspect, and two fifths of the sponsors wanted a very complete picture.

Deciding To Give the Sentence. All of the judges interviewed received information about community service sentence proposals, but 5 of the 11 said they were dissatisfied with this information. The judges wanted very specific information to enable them to come to their own decision about the appropriateness of community service for a specific offender rather than be given a general assessment. They wanted details about the placement that had been arranged, and over half of them wanted to know that the offender had consented.

The law requires that an offender must consent to a community service sentence. All of the probation officers with direct responsibility for the sentence said that they always secured consent. The process was one of explaining to the offender what the sentence was, what it involved, that consent was required, and then asking them if they did consent. Most of the judges said they secured consent, but a third of them disliked doing so, although it had been rare for an offender to refuse. Although nearly all of the offenders said they had been asked directly if they consented, a few said the felt they had no choice, a few said they had been asked after having been sentenced, and two said they had not been asked at all.

Many offenders did not seem to be in a position to give well-informed consent. Only one in five had talked with a sponsor at the time of sentencing, and one in three said they had had no idea what the sentence was going to be like. Offenders consented for various reasons. Most felt it was better than any likely alternative. Several agreed to the sentence because it fitted in with their job or family commitments. Some agreed because they felt the sentence was a good one. And some just agreed.

Most judges sought to avoid the extremes of 8 and 200 hours of community service. A small number of hours was thought to be a waste of time, and a very long sentence was believed to be overwhelming. About half set the hours for community service in relation to quantities of periodic detention. Others tried to equate hours with amounts fined. Most did not have any strong preference about the type of service that should be performed.

The Actual Placement. Placements were made with day and residential centers for people needing care, special interest groups, sporting groups, service groups, churches, and education centers. The size of these organizations varied a great deal, as did the extent to which they were dependent on volunteer help. Usually the sponsor and offender set a regular time for doing the work. About two-thirds of the placements started with arranged hours, with daytime hours during the week being about twice as common as weekend or evening hours. In other placements no set hours were arranged, and offenders were free to put in time as they were able. A few did their time during residential stays at camps. Cleaning, gardening, or maintenance jobs were the tasks for about half the placements. Others included caring for people at hospitals and disabled centers, helping at educational and sports centers, being involved in craft or sports instruction, doing office work, and being active in community recreation and community center schemes. Most offenders (68 percent) had contact with people outside the organization while completing community service work. Only very rarely did people on community service work alongside each other. Most offenders (85 percent) felt comfortable with the people they met, and most (77 percent) enjoyed seeing the other people. About half the offenders felt that they had made friends with some of the people met while doing community service, and just under half said that they spent or would like to spend time with these people outside community service hours.

Sponsors and offenders were encouraged to talk about the day-to-day problems encountered with the community service sentence. Most sponsors (85 percent) and offenders (71 percent) identified at least one problem. Poor attendance was the most common problem for the sponsors, with almost two-thirds having experienced an offender not turning up to do the hours. This was manageable for some, but for others it was the cause of frustration, putting strains on the placement. Inadequate information was the second most common problem for the sponsors, with almost a third saying that they did not have enough information about the scheme. Problems mentioned by about a fifth of all sponsors were that they felt unclear about their responsibilities, they had difficulties organizing their time because of their involvement with the community service scheme. Some members of the organization did not trust the offender, some members found it hard to adjust to having an offender around, some offenders were not punctual, and some needed a lot of supervision. Other problems included a feeling that they lacked general support from probation, an offender's appearance was sometimes unacceptable, and some members or clients of the organization did not treat the offender well. Difficulty completing the hours was the most common problem for offenders, with just over a third reporting this as a problem either because of other commitments or because they found the work boring or pointless. About a fifth of the offenders identified showing up late and difficulties getting transportation as problems. Others mentioned not liking the work, not getting on with the sponsor, having money problems, not being clear what they were expected to do, and losing time with their families.

About three-quarters of all placements made with the sponsors interviewed had either been successfully completed or were in progress at the time of the survey. Just under a quarter of all placements had ended without the hours being completed, and these cases were spread across approximately half the sponsors. The most common reason for the placement ending early was that the offender asked for it to be changed; the next most common reason was that the sponsor wanted the placement ended.

Enforcing the Sentence. Breach proceedings had been initiated in the last year by 6 of the 42 officers, and 5 out of the 11 judges had presided over breach proceedings in the last year. Most of the probation officers (85 percent) were satisfied with the way the sentence was being enforced. Three out of the six officers most directly connected with the sentence, however, were not satisfied because of the slowness in bringing breach proceedings and the inadequacy of the breach penalty. Seven of the eight judges who were able to comment on enforcement procedures said they were dissatisfied. They thought the maximum breach penalty of a fine was inappropriate and wanted parity with the sanction for a breach of periodic detention—3 months in prison. Some said that breach proceedings should be brought as soon as the person failed to do the service.

Running the Scheme. A community service sentence requires the involvement of at least four people—the judge, the probation officer, the sponsor, and the offender. There are many steps in arranging and operating a placement; where did members of each of the three most closely involved groups think the responsibility should lie for several key administrative tasks (e.g., arranging a placement, keeping a record of the hours, giving evidence at breach proceedings)? The probation officers, sponsors, and offenders were asked who they thought should be finally responsible for doing each of several tasks. Probation officers were in greater agreement with each other than were the other two groups, and the offenders were in least agreement about who should be responsible for what task. Probation officers, sponsors, and offenders did not always agree with each other about who should take what responsibility. Moreover, people tended to assume more responsibility than others thought they should be given. Probation officers assumed over two-thirds of the total responsibility, although they were assigned only half of this by the other two groups. The sponsors assumed about a third of the total responsibility, and offenders agreed with this. However probation officers allocated only a quarter of the overall responsibility to sponsors. The offenders assigned about half of the remaining proportion of responsibility to themselves and half to the judge, whereas the other two groups assigned nearly all of the remaining responsibility to the judge (and hardly any to the offender).

None of the three groups agreed about who should decide if an offender should be considered for community service. This task was assigned to the judge and to the probation officer equally, often by probation officers and sponsors but more often to the probation officer by the offenders. Most people, however, agreed that the probation officer should be responsible for deciding on an offender's appropriateness. Finding a suitable placement was seen as the probation officer's job, although a significant number of the offenders and several people in the other two groups saw this as the offender's own responsibility. Most people thought the probation officer should explain the purpose of community service to the offender, but several sponsors thought the judge should do this. Most thought the probation officer should explain to the offender how community service works, although several offenders saw this as the sponsor's job. Although most people in each group thought the probation officer should determine if the offender consented to the sentence, a significant number of the sponsors and offenders and several of the probation officers thought this was a judge's job.

There was little agreement about who should organize the hours for the offender to work. Offenders gave this task about equally often to themselves and to the sponsors and occasionally to the probation officer. However, neither the probation officers nor the sponsors felt the offender should be responsible for organizing hours. Sponsors saw it mainly as their responsibility, and probation officers agreed, although a significant number of them thought it was the probation officer's job. Assigning the offender tasks, recording the hours, and deciding if the quality of the work was satisfactory was seen as the sponsor's job by most people. However, several probation officers thought they should take responsibility for the quality of the work, and a significant number felt they should record the hours. Probation officers were seen both by themselves and offenders as the people who would mainly discuss any problems the offender had with doing community service. Sponsors, however, said this was their job almost as often as they said it belonged to the probation officers. Initiating breach proceedings was always seen as their job by the probation officers, but a significant number of both offenders and sponsors thought this was the sponsor's job. Probation officers rarely saw anyone but themselves as giving evidence at breach proceedings, but almost half the sponsors saw this as their responsibility, and most offenders agreed with them.

Benefits and Satisfaction

Open-ended questions were used to probe for respondents' views regarding benefits of the community service scheme, satisfaction with the scheme, and suggested improvements for the scheme.

Benefits. Views were elicited as to community service benefits to the offender and to the community. Probation officers, judges, and sponsors could only guess whether offenders benefited from the community service sentence. Probation officers thought offenders benefited because the sentence was less destructive and intrusive than the other sentences and because of the chances it might provide for personal fulfilment. Judges agreed that contact with the community could have valuable spinoffs. Sponsors all thought that at least one offender placed with them had derived some benefit and mentioned aspects of personal fulfillment for offenders which took place. The most tangible evidence of benefit which emerged was that 22 percent of the sponsors reported that positive contact between the organization and an offender had continued after the hours were finished. The offenders were the only ones who could really say whether or not they had benefited; 71 percent thought they had benefited and mentioned positive experiences meeting different people, starting to feel better about themselves, learning about a community group, developing a new skill, learning about work discipline, and staying out of jail.

Probation officers and judges thought that the main benefit for the community came from work being done for no payment. About half of the probation officers and judges also thought that contact with offenders would encourage understanding and develop a sense of community responsibility for offenders. Offenders and sponsors were asked specifically about benefits for the sponsor. Nearly all of the offenders thought the sponsor had benefited from the work done for the sponsor. The sponsors were in the best position to say what benefit there had been from the association, and 88 percent agreed that there had been a direct benefit for the organization. The majority mentioned the practical help they got from the offenders; their comments were often enthusiastic and positive. A very rough measure of the amount of practical help to sponsors was that the work done for them, on average, would have cost about $150 per month. Ad-

ditionally, just over a third of the sponsors felt that people in the organization benefited from the association with an offender.

Satisfaction With the Sentence. **Eighty-three percent of the probation officers were satisfied with the type of offenders being referred to community service, 83 percent were satisfied with the type of community service opportunities available, and 85 percent with the way in which the sentence was being enforced, although there was less satisfaction with the last two aspects of the sentence by those probation officers most directly connected with the sentence. Some thought the sentence could be used with more adventure and not just for safe risks, and some thought it was not being used for people who would otherwise have gone to prison. About half of the judges were not satisfied with the information they received on placements, and most were not satisfied with breach regulations.**

Ninety-two percent of the sponsors said they would take more people, although a quarter said their involvement would depend on work being available and suitable people being chosen. Those who would not take more people said it was because there was no available work, they didn't want to put their name on the line, or it was too much trouble.

Eighty-eight percent of the offenders said community service was the right sentence for them, and most thought they had been given the right number of hours, although about a quarter thought they had been given too many. About two-thirds of the offenders thought that doing community service made up for what they did; some felt they had got into trouble but now they had paid for it—either by working hard or by putting something positive back into the community. Offenders who said community service did not make up for what they did indicated that community service did not relate to what they had done nor did it help the victims concerned. Sixty-one percent of the offenders said the sentence had "kept them out of trouble" and half of these were able to say why such as "kept me occupied" or "out of the pubs."

Asking what was most liked about the sentence produced a rich variety of responses. Probation officers most liked the flexibility of this sentence, allowing it to be more personalized. They thought it was a humane and sensible penalty, encouraging accountability and possibly averting some offenders from a prison experience. They also liked the opportunities community service presented for bringing the offender and community together. Judges also liked the flexibility of the sentence and the additional choice of a sentence to enable more appropriate sentencing. Sponsors liked the flexibility of the sentence, the feeling they were able to help offenders, and the fact that jobs were getting done. Offenders liked the way the sentence was organized with flexible hours and light supervision, the feeling that it had saved them from something worse, the people they had met, and being given something to do and the opportunity to help people. The offenders who did not like the sentence felt they had just been given work.

Suggested Improvements. Respondents were asked what improvements they thought could be made in the community service sentence. Probation officers suggested improvements in the area of administration—more staff being the most common suggestion to allow more time for establishing placements. Some officers thought the sentence could be improved with more and a greater variety of sponsors. Some thought the soft option image needed to be changed by simplifying breach proceedings and increasing the breach penalty. Some thought the aims of the sentence were not clearly understood by the judges and thought community service should be used for more serious offenders and more often for offenders from poor and minority group backgrounds. Judges most commonly wanted strengthening of the breach regulations with proceedings being brought before the year had expired and a more severe breach penalty. They also wanted more detailed information about proposed placements. Sponsors suggested ways to improve their involvement with the scheme, including routine calls from the probation officer, clearer instructions, and a better liaison between the three people concerned in a placement. They also suggested ways to solve the attendance problem, most commonly seeking more discipline and routine in placements. Offenders wanted more variety of jobs, especially skilled, meaningful, and educational work. They thought that sponsors should be better prepared for the placement and that the sentence should be more widely used.

Conclusions

Data secured from personal interviews with judges, probation officers, community service sponsors, and offenders sentenced to community service indicate considerable positive acceptance of community service as a sentence in New Zealand. The New Zealand experience suggests that it is feasible and practical to implement community service as a sentencing option. There are a number of areas, however, to which attention might be directed either in the further development of the concept in New Zealand or for the attention of policy-makers and planners who may be interested in considering the sentence on a jurisdiction-wide basis in the United States.

A series of issues relate to the purpose of the sentence, especially its relationship to currently available sentences. The official policy in New Zealand was to introduce the sentence as an alternative to incarceration, but the prac-

tice seems to be to use community service as an alternative to other new custodial sentences, especially periodic detention or fine when these are considered inappropriate for a specific offender. This raises the issue of whether community service should be conceptualized as a penalty in its own right for designated groups of offenses or offenders as contrasted with using community service as a backup penalty when some other sentence is not considered appropriate because of specific circumstances of the offender. There was a range of opinions in New Zealand as to where community service should fall in the sentencing tariff. Many respondents thought community service was between the fine and periodic detention, that is, more severe than the fine but less severe than periodic detention, but others perceived the sentence as falling between periodic detention and prison. There needs to be consideration and consensus as to the level of severity assigned to the community service sentence. The place of the sentence in the tariff and its relationship to other sentences will, of course, hold implications for defining offenders or offenses for which the sentence is deemed appropriate. Consistency in administration, if this is a desired goal, will require reaching some agreement in these three areas.

The study of the implementation of the sentence revealed a number of administrative choices to be made by persons charged with administration of a community service sentence. How should specific offenders be matched with sponsors? The practice in New Zealand varied from some probation districts in which probation officers engage offenders in a process of finding their own sponsors to other districts which fully assume this responsibility and have developed procedures to recruit and orient sponsors to whom offenders are assigned. Generally there was agreement that there needs to be a wide range of sponsors available so that varied placements can be offered depending on the interests and skills of the offenders. The common practice in New Zealand is for the judge to sentence the offender to a specified number of hours of community service and then for the probation department to develop a specific plan for the offender to complete these hours. But the judges wanted much more specific information regarding the agency for which the offender will be providing the service and the nature of the work to be done before sentencing. This raises the perennial question of how specifically the courts should dictate the terms of a correctional program, but it is nonetheless an issue which requires clarification if any program is going to be operated smoothly. There is need for close communication between probation officers and the sponsor around planning and monitoring placements. The sponsors appear to be able to make a number of key decisions which they would typically make in regard to any unpaid person providing service such as scheduling hours, maintaining records, making job assignments, and determining if the work is being done satisfactorily. On the other hand, sponsors would like to have routine communication with the probation officer including feedback as to how the probation officer sees the placement progressing and information about what happens when the placement breaks down. Finally, the practitioners in New Zealand are clear that there needs to be a backup sanction to be consistently enforced when the community service obligation is not met. Breach proceedings should be instituted at the point the offender has failed to appear, without a reasonable explanation, rather than waiting until the full year assigned to complete the hours has elapsed. The current backup sanction in New Zealand is a fine which is generally perceived as inadequate; judges would like to have the authority to impose a 3-month sentence of imprisonment which is the backup sanction for failure to comply with an order for periodic detention.

The New Zealand experience indicates that a flexible, individualized community service sentencing program can be implemented which provides offenders opportunities to contribute meaningful work to their communities. Agencies, both public and nonprofit, are available to serve as sponsors for offenders completing community service. The community service sentence can be a positive experience for offenders and can be organized in a way to avoid the more deleterious effects of mundane, work-crew types of activities.

REFERENCES

Austin, J. and Krisberg, B. (1982) "The Unmet Promise of Alternatives to Incarceration," *Crime and Delinquency,* July, 374-407.

Beha, J., Carlson, K., and Rosenblum, R. H. (1977) *Sentencing to Community Service,* National Institute of Law Enforcement and Criminal Justice, U.S. Department of Justice.

Bradshaw J. (unpublished) Research into the Community Service Scheme in Dunedin.

Fisk, A. (1982) "The Community Service Sentence," *Law in the Community, 2,* 19-20.

Flegg, D. (1976) *Community Service—Consumer Survey 1987-1976,* Nottinghamshire, Probation and After-care Service.

Harland, A. T. (1980) *Court-ordered Community Service in Criminal Law,* National Assessment of Adult Restitution Programs, School of Social Development, University of Minnesota, Duluth.

Harris, M. K. (1979) *Community Service by Offenders,* National Council on Crime and Delinquency, U.S. Department of Justice.

Hermann, S. (1981) *The Community Service Order Programme in Ontario—3. A One Year Follow-up,* Planning and Research Branch, Ministry of Correctional Services, Ontario.

Lee, A. J. (1982) "Community Service Orders," *Background Papers, Penal Policy Review Committee,* Department of Justice, Wellingon.

Leibrich, J., Galaway, B., and Underhill, Y. (1984) *Community Service Orders in New Zealand: Three Research Reports,* Department of Justice, Wellington.

McEwan, J. (1978) "Assessing the Value of Community Service" *New Law Journal,* August 772-773.

Oxley, P. (1984) *Evaluating Rehabilitation: Community Service Orders in South Australia,* Attorney-General's Department, South Australia.

Pease, K., Durkin, P., Earnshaw, I., Payne, D., and Thorpe, J. (1975) *Community Service Orders,* Home Office Research Studies, No. 29, London

Pinder, A. (1982) "Community Involvement in Penal Policy," *N.Z.P.A.R.S. News,* January 1-2.

Polonoski, M. (1981) *The Community Service Order Programme in Ontario—1, 2,* and *4,* Planning and Research Branch, Ministry of Correctional Services, Ontario.

Steward, J. (1982) "Alternatives to Prison," *Law in the Community, 2,* 15-18.

Willis, A. (1977) "Community Service as an Alternative to Imprisonment: A Cautionary View," *Probation Journal, 24,* 120-125.

Assessment Centers as a Management Promotion Tool

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THE FIELD of corrections is likely to continue to flounder in the abyss of inefficiency unless major emphasis is placed on the selection and promotion of good managers. Private corrections is prospering because its agencies and corporations recognize the need for managerial talent and, generally, outclass public corrections in attracting and rewarding good managers while discarding poor or ill-suited ones. The time has come for state and local correctional agencies, including probation, parole, and institutional corrections, to awaken to better ways to identify good managers.

Corrections literature abounds with articles dedicated to selection of line officers (Downey and Signori, 1958; Goldstein, 1980; Hammer, 1968; Perdue, 1964; Wicks, 1980; Lundberg, 1947). Some of the literature describes the correctional officer of the past as "a residue of the dark ages," but, due to the complexity of contemporary roles, new pools from which to recruit, and social science training, a new breed of "correctional" officer may emerge (Toch, 1978:20). From this talent pool we are to locate and promote the "best" supervisors and managers. How is this feat to be accomplished? Those who rise to the top of the promotional list should do so only because they are the most qualified men and women to perform the functions which the organization deems appropriate, given the dire need for innovative management talent and the deletion of anachronistic keepers of the cons as discussed by Toch (1978). To place people in positions of authority without *knowing* that they best fit the criteria may be a tremendous gamble on the part of the corrections agency or organization. Private industry is much less inclined to take such a gamble.

Fortunately there is a growing body of literature calling for better, behaviorally based methods of selecting and evaluating corrections personnel (Willis, et al., 1979; Wahler and Gendreau, 1985). Even if the behavioral skills approach were adopted, and even if line officers were better suited for corrections work, we would still be no closer to identifying good supervisors and managers within that more acceptable and effective talent pool. For this task, it is time that we turned to private industry—not to relinquish correctional responsibilities, as is currently being debated, but to become educated in assessment and selection of good managers.

Talented managers are central to the efficiency and effectiveness of any organization. The business community has recognized that only those with the potential to be good managers should be hired, and only those with the proven ability to be good managers should be promoted. While some hold that good employees can be coached and developed into good managers, others maintain that managers simply find their proper level and that there is little or no change in management ability (Campbell, et al., 1970). The criminal justice system tends toward the latter approach, sometimes called the "utilization emphasis" (Bray, Campbell, and Grant, 1974:2). This approach requires a careful analysis of management talent and assessment of potential; otherwise, the wrong personnel will be placed in management positions. Unfortunately, promotions in criminal justice agencies have been based on criteria other than one's ability to perform well at the X + 1 level. Private businesses, on the other hand, have increasingly emphasized evaluation and assessment of management talent.

Assessment Center Concept

The careful analysis and programmed assessment of management ability is hardly a new concept. During World War II, the Office of Strategic Services used rigorous tests and simulation exercises to determine applicants' fitness for certain intelligence positions. The examinations lasted 1 week and were designed to identify each and every strength and weakness of the applicant. The procedure was called an "assessment center" and was staffed by a group of psychologists and psychiatrists who were familiar with the individual qualities which the positions demanded. The process was long and arduous, but the examination team was convinced that it was a much better technique to isolate and identify certain job-related characteristics intrinsic in the position being sought than any of the conventional selection and promotion methods (Office of Strategic Services Staff, 1948).

A chronic need for more and better managers led to widespread use of the multiple assessment programs in the business community. By 1969, assessment centers were used by American Telephone and Telegraph, International Business Machines Corporation, Standard Oil of Ohio Company, General Electric Company, Sears, Roebuck and Company, J.C. Penney Company, the Internal Revenue Service, and others (Byham, 1969). The programs differ depending on the types of behavioral variables considered important to the organization, but all include some form of simulations, group processes, information processing, and personal interaction. The AT&T Assessment Center was the most comprehensive and well-organized of the early versions, and the variables or dimensions used to test an applicant's attributes included (Bray, Campbell, and Grant, 1974:18-20):

- General Mental Ability
- Oral Communications Skills
- Written Communications Skills
- Human Relations Skills
- Personal Impact
- Perception of Threshold Social Cues
- Creativity
- Self Objectivity
- Social Objectivity
- Behavior Flexibility
- Need Approval of Superiors
- Need Approval of Peers
- Inner Work Standards
- Need Advancement
- Need Security
- Goal Flexibility
- Primacy of Work
- Organizational System Values
- Realism of Expectations
- Tolerance of Uncertainty
- Ability to Delay Gratification
- Resistance to Stress
- Range of Interests
- Energy
- Organization and Planning
- Decisionmaking.

The techniques used or invented to reveal these dimensions also vary from organization to organization, but the AT&T Assessment Center used the following:

The Business Game—The candidates were divided into groups of six to eight persons and told that they were to pretend that they were in business together as partners in a small toy manufacturing enterprise. They were to work individually at times and as a group at other times. The assessees were to buy the parts, assemble the toys, and sell them back with the goal of making as much money as possible. This exercise was used to judge the following dimensions: Human Relations Skills, Self Objectivity, Behavior Flexibility, Need Approval of Peers, Tolerance of Uncertainty, Resistance to Stress, Energy, Organization and Planning, and Decisionmaking.

The Group Discussion Problem—Again the assessees were divided into groups of six to eight. They were told that they should consider themselves middle management (or the level to which they hoped to be promoted) and they were to recommend one of their foremen for promotion. Each of the assessees were given a 300-word description of the foreman, and they were given 5 minutes to present their candidate. The group was given 1 hour of free (leaderless) discussion on the merits of each candidate. They were told to try to argue for their individual candidate, but, as a group, they would have to select the one who would make the greatest contribution to the organization. The exercise tested the candidates on Oral Communication Skills, Human Relations Skills, Perception of Social Cues, Behavior Flexibility, Need Approval of Peers, Resistance to Stress, Energy, and Organizing and Planning.

The In-Basket—The assessees were told that they had just been appointed to the position they were seeking. They were to arrive in their new job on Sunday and leave in exactly 3 hours to catch a plane for a meeting. They would be out of town for several days and must attend to all of the things left by their predecessor as well as anything that was expected to come up in the time the new office-holder would be out of town. The assessees were then given a packet of materials including 25 distinct but interrelated problems. These problems ranged from minor but thorny problems such as a secretary going on vacation to a complicated report requiring an immediate response. The assessee worked individually and had to deal with each of the problems, write notes, report on actions taken, delegate tasks where appropriate, and recognize the interrelationship of some of the problems. Following the In-Basket exercise, the AT&T team interviewed each assessee to see how the problems were addressed, the thought processes used, and the logic of the decisions. This interview became a part of the assessment of the candidate.

The Projective Tests—These tests were designed to evaluate the motivational and personality characteristics of the assessee. The tests involved free responses to words, pictures, and incomplete sentences. The subject then "projected" his own meaning into the stimuli. A clinical psychologist then reviewed all of the responses of each assessee and produced a report on the subject's motivation and personality patterns.

The Interview—Each assessee underwent an interview of approximately 2 hours. The topics were unstructured and generally dealt with the individual's plans, extracurricular activities, education, and the like. The characteristics being judged were Self Objectivity, Realism of Expectations, Need Advancement, and Range of Interests.

The AT&T Assessment Center, as discussed by Bray, Campbell, and Grant (1974), presents the best example of a comprehensive selection and promotion simulation exercise which is both organization-specific and position-specific. The series of examinations and exercises lasted

4 days, tested the applicant's ability to perform at the level or rank sought, and tested the motivations for attaining the position.

Police Assessment Centers

In the early 1970's, the New York City Police Department embarked on developing assessment centers to assist in ranking candidates for promotion to various supervisory and management positions. The private industry model was used but modified to suit the needs of the organization. Twenty-seven dimensions were identified and blocked into five categories. Some of the dimensions were (Dunnette and Motowidlo, 1976:57):

Problem-solving Dimensions

- Problem Analysis—Grasps the source, nature, and key dimensions of a problem.
- Judgment—Recognizes intuitively or otherwise significant factors and comes to sound, practical decisions.

Communication Dimensions

- Dialogue Skills—Effectiveness of discussion and expression in person-to-person or small group interactions.
- Writing Skills—Expresses ideas in writing with facility.

Emotional and Motivational Dimensions

- Reactions to Reassure—Functions in a controlled, effective manner under stress; keeps his head.
- Drive—Amount of directed, sustained energy brought to bear in accomplishing objectives.

Interpersonal Dimensions

- Insight into Others—Ability to proceed giving due consideration to the needs and feelings of others.
- Leadership—Directs the behavior of others toward the achievement of common goals by charisma, his insights, or the assertion of his will.

Administrative Dimensions

- Planning—Forward thinking, anticipates situations and problems, and prepares in advance to cope with them.
- Commitment to Excellence—Determination that task will be done well, achieves high standards.

The exercises which were constructed to test each candidate's performance, relative to the dimensions, included several leaderless group discussions on different topics, an interview and an in-basket exercise. The New York City Police Department Assessment Center lasted 2½ days. Extraordinary care was taken to make certain that the exercises were closely tied to the dimensions and simulated job conditions. Additionally, the dimensions were believed to be closely tied to job effectiveness.

Currently a large number of metropolitan police departments utilize assessment centers as the process for promotional consideration for the ranks of lieutenant and captain. These job simulation exercises are generally considered the best method of generating and evaluating job and rank-related behavior. In some organizations, the assessment center is one phase of the promotional consideration process (Thibault, Lynch, and McBride, 1985:238), but it is the most elaborate phase of the examination.

Validity and Reliability of Assessment Centers

Assessment centers, or any other evaluation method, should be used *only* if they are more valid and reliable than alternative methods. The evidence indicates that assessment centers are indeed better measures of management ability than the more conventional processes. Dunnette (1971), in an extensive evaluation of multiple assessment procedures, concluded that such techniques provide information more directly relevant to the management function.

The objective in the evaluation and selection of managerial talent is to identify people who are more effective and have higher potential, given the organization exigencies and imperatives. The predictive validity of assessment centers tests the ability of the method to select the right people for promotion. Since promotion to the next highest level is a direct function of the assessment center in those organizations which utilize this tool, a better index is the relationship between assessment center results and beyond-first-level promotions. Kraut and Scott reported that "among those who were rated higher in the (assessment center) program, significantly greater proportions go on to second promotions" (1972:126). Similarly, low assessment center ratings are predictive of demotions, even though the decisions are not contaminated by knowledge of the results of the assessments by those recommending demotion. The findings of this study of a large-scale assessment program (1,100 employees over a 5-year period) showed that the "assessment program appears useful by making discriminations of management potential which are later confirmed by the rate of promotions, as well as demotions" (Kraut and Scott, 1972:128).

In a review of the validity of the assessment center approach, Huck found that "the point biserial correlation between assessment center predictions and level achieved in management was .44 for the college men and .71 for the non-college portion of the sample" (1973:195). Similarly, Moses (1971) reported a multiple correlation of .463 between all assessment variables and the criterion of progress in management beyond the first level. These findings point to the validity of the assessment approach but an assessment center is a relatively involved, complicated, and costly endeavor. The question of comparative value addresses the utility of this approach versus others and the efficacy of the multiple assessment procedures. Wollowick and McNamara (1969) considered the incremental gains by using each procedure in the assessment center program. They reported multiple correlations of .45 for tests alone, .41 for behavioral characteristics alone, and .39 for job-related exercises alone. By regressing all of the variables into the equation they achieved a multiple correlation of .62, thus almost doubling the variance explained. Byham (1970:154) stated:

> In a study of 20 companies that operated centers, I uncovered some 22 studies in all that showed assessment *more* effective than other approaches and only one that showed it exactly *as* effective as some other approaches. None showed it *less* effective. As I suggested before, these studies exhibit correlations between center prediction and achievement criteria such as advancement, salary grade, and performance ratings that range as high as .64.

By combining the results of independent evaluations of assessment centers, Huck (1977) concluded that the probability of promoting a person who was likely to be an above-average achiever by random selection of the individual was 15 percent. When management recommendations are included in the promotional consideration, the probability of identifying a successful achiever increases to 35 percent. When the assessment center is added as a variable, the probability of identifying a "winner" jumps to 76 percent.

Assessment approaches are not hampered by low reliability, according to available research. Huck (1973) reviews the interrater reliabilities in a number of studies and reports ranges of .68 to .99 with medians of .89 to .92. Additionally, Huck reported no subgroup bias for race or sex.

One of the simplist yet most influential indicators of the applicability of the assessment center approach is its face validity. The true-to-life, job-related, and position-specific tasks which are the mainstays of the assessment approach, coupled with the development of role and job-related dimensions and experience-based assessors, combine to make assessment center programs the most logical and valid way of identifying the best managers and supervisors in virtually every field, to include corrections.

Assessment Centers for Corrections

The concept of assessment centers obviously has broad application and is applicable to many types of organizations. Criminal justice, with its dire need for better managers, is an area which should explore *every* management evaluation tool available, including assessment centers. The subsystem of police has made some efforts in that regard, as mentioned earlier. Corrections, court administration, probation, parole, and juvenile justice are areas where the management of people and processes is critically important yet we have few tools to make decisions on how to select, evaluate, and promote personnel in those positions. The Texas Department of Corrections (1985) has established baseline promotional procedures which include an oral interview before a ranking board, but this procedure represents only a small part of an assessment center promotion system. All criminal justice organizations should take a lesson from industry and consider complex methods of determining who to promote.

The assessment center approach could have a tremendous impact on the appropriateness of the management training efforts within the correctional system. In addition to identifying good managers, multiple assessment approaches assess the strengths and weaknesses of the persons in the organization. Training and development emphases based on the results of assessment centers would be much better than a "serendipity" approach used quite often in criminal justice training. If the dimensions used in an assessment approach are carefully constructed, and evidence indicates that these dimensions can be constructed for social service organizations (Clayton and Gatewood, 1981), as well as the careful selection and training of assessors, all indications are that only the *best* applicants will be promoted. These promotions will be based on abilities to perform the sought after position and not biased by other factors. There is every indication that the process will also be free of biases and contaminants implicitedly condemned by equal employment opportunity guidelines (Joiner, 1984).

The attributes of a "good manager" in the field of corrections have not been attended to here, nor will they be. The assessment approach is not a cookbook method which can quickly be implemented without consideration of job and organization-specific criteria. Each organization and each aspect of corrections has its own agenda, and "good managers" should come closest to meeting the exigencies and requirements of that agenda. No systemwide set of dimensions which should be tested in an assessment center could be formulated, but with careful and thoughtful self-evaluation, each agency or organization can formulate its own dimensions, generally modeled after the examples above. By specifically testing personnel against those dimensions, the list of candidates for promotion may be ordered in a way which reflects the candidates' skill and ability to perform the position they are serving. This may be the best, most logical, least biased method of promoting.

Assessment centers may not be the most feasible tool to assess managerial talent in every organization in the field of corrections, but they afford many advantages which at least should be considered by administrators. The assessment center successes in the public and private sectors are well chronicled. The track record for the multiple assessment approach is impressive, and the field of criminal justice would do well to educate itself on the successes of the major private organizations.

REFERENCES

Bray, W., R. Campbell, and L. Grant. *Formative years in business: A long term AT&T study of managerial lives.* New York: John Wiley and Sons, 1974.

Byham, W. C. *The uses of assessment centers.* New York: J.C. Penney Co., 1969.

Byham, W. C. Assessment center for spotting future managers. *Harvard Business Review, 48*(4), (1970) 150-160.

Campbell, J. P., M. D. Dunnette, E. E. Lanier, and K. E. Weick, Jr. *Managerial behavior, performance and effectiveness.* New York: McGraw Hill Book Co., 1970.

Clayton, K. and R. Gatewood. The development of managerial performance appraisal system in a social service agency. *Public Personnel Management Journal, 10*(2), (Summer, 1981), 261-269.

Downey, R. W. and E. L. Signori. The selection of prison guards. *Journal of Criminal Law, Criminology and Police Science, 49,* (1958), 234-236.

Dunnette, N. D. The assessment of managerial talent, in *Advances in psychological assessment, Vol. II.* Edited by Paul Reynolds. Palo Alto: Science and Behavior Books, 1971, 79-108.

Dunnette, M. D. and S. J. Motowidlo. *Police selection and career assessment.* Washington, D.C.: U.S. Department of Justice, 1976.

Goldstein, B. *Screening for emotional and psychological fitness in correctional officer hiring.* Washington, D.C.: American Bar Association Resource Center on Correctional Law and Legal Services, 1975.

Hammer, M. Differentiating good and bad officers in a progressive women's reformatory, *Corrective Psychiatry, 14,* (1968), 114-118.

Huck, J. R. Assessment centers: A review of the external and internal validity. *Personnel Psychology, 26* (1973), 191-212.

Huck, J. R. The research base. In Moses, J. L. and Byham, W. C. (eds.), *Applying the assessment center method.* New York: Pergamen Press, 1977.

Joiner, D. A. Assessment centers in the public sector: A practical approach. *Public Personnel Management Journal, 13*(4), (Winter, 1984), 435-450.

Kraut, A. I. and G. J. Scott. Validity of an operational management assessment program. *Journal of Applied Psychology, 56*(2), (1972), 124-129.

Lundberg, D. E. Methods of selecting prison personnel. *Journal of Criminal Law and Criminology, 38,* (1947), 14-39.

Moses, J. L. Assessment center performance and management progress. Paper presented at the 79th Annual Meeting of the American Psychological Association. Washington, D.C., 1971.

Office of Strategic Services Staff. *Assessment of men.* New York: Holt, Rinehart and Winston, 1948.

Perdue, W. C. The screening of applicants for custodial work by means of a temperament test, *American Journal of Corrections, 26,* (1964), 14-19.

Texas Department of Corrections. Administrative bulletin: Correctional position promotion procedures. No. 85-43 (March 1985).

Thibault, E. A., L. M. Lynch, and R. B. McBride. *Proactive police management.* Englewood Cliffs, New Jersey: Prentice Hall, Inc., 1985.

Toch, H. Is a 'correctional officer' by any other name a 'screw'? *Criminal Justice Review, 3*(2) (1978), 19-35.

Wahler, C. and P. Gendreau. Assessing correctional officers. *Federal Probation, 49,* (1) (1985), 70-74.

Wicks, R. J. *Guard! Society's professional prisoner.* Texas: Gulf Publishing Co., 1980.

Willis, J., B. Jessup, P. Savage, G. Cooper, and R. Slesser. Preliminary data on the correctional personnel rating scale. *Canadian Journal of Criminology, 21,* (1979), 71-80.

Wollowick, H. B. and McNamara, W. J. Relationship of the components of an assessment center to management success. *Journal of Applied Psychology, 53,* (1969), 348-352.

Sentencing Guidelines: To Be Or Not To Be

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Introduction

IN THE fall of 1981, Paul Sutton of the National Center for State Courts filed a report that called attention to the existence of sentencing variation in the State of Nebraska (Sutton, 1981). While concerns have been raised relative to the accuracy of the report, Sutton's original evaluation and a subsequent reanalysis undertaken by Horney (1982) substantiate the existence of some degree of sentencing variation in Nebraska. The amount of the variation that exists in Nebraska, however, appears to be rather small and the range somewhat narrow by national standards. Furthermore, some argue that in a state as geographically large and diverse as Nebraska, local variations in attitudes and perspectives as to the seriousness of a particular crime are to be expected. Consequently, some variation in sentencing could be considered both justifiable and desirable in that it reflects valid variations in perspectives of different communities. Nonetheless, an official committee was established to examine the situation, and the legislature considered several bills.[2]

The case of Nebraska is not unique. Allegations of disparate sentencing practices have caused numerous states and the Federal government to investigate the matter. Those investigations have documented the existence of widespread sentencing *variation* in this country, variation in sentences from state to state, from court to court within a state, from judge to judge within the same court, and even variation in sentencing practices by one judge over time (Court Watch Project, 1975; Diamond and Zeisel, 1975; Diamond, 1981; Partridge and Eldridge, 1974; U.S. Department of Justice, 1973). The question, of course, is whether that variation, which unarguably exists, is justified or not. The question is whether that variation is truly disparity. Exactly what is and what is not justifiable variation in sentencing patterns is not easily answered, if it is answerable at all given the heterogenic makeup of our society. Neubauer (1984: 337) gives us a definition of sentence disparity, "...the lack of similar sentences for similar offenders committing similar offenses." But this is a generic definition and fails to take into account the vast social, cultural, and political differences that coexist in this country. What are and what are not similar offenses? Who are and who are not similar offenders? What are and what are not similar sentences? The latter may be answerable in some quantitative sense, but the former two are clearly a matter of perspective.

While an absolute consensus will likely never be reached, some persons suggest that existing sentencing variations are generally disparate and are calling for a reduction in the level of that sentencing disparity, while others classify present practices as acceptable and within the realm of justifiable differences. At present, the former group seems to have the center stage, and the great hue and cry on the political forefront is to reduce the disparate nature of sentences. Presumptive sentencing guidelines have been proposed as a means of achieving that end.

Sentencing Guidelines

Presumptive sentencing guideline models include four elements:

1. A standard sentencing range established by law.
2. A statutory presumption that sentences, as established by sentencing judges, will fall within the legally defined range.
3. A legal proviso allowing sentencing judges to move sentences outside the guidelines in light of aggravating or mitigating circumstances unique to each individual case.
4. A requirement that sentencing judges make formal written justification in the event a sentence falls outside the guidelines.

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[1] This article is largely taken from a report prepared by Chris Eskridge who served as a member of the Nebraska Supreme Court Committee on Sentencing Guidelines. While Dr. Eskridge prepared the bulk of the final report, the entire Committee provided input and feedback. Members of the Nebraska Supreme Court Committee on Sentencing Guidelines were as follows:

Mr. Charles L. Benson
Judge Jeffre P. Cheuvront
Judge James J. Duggan
Judge Janice L. Gradwohl
Judge John T. Grant
Mr. Ivory Griggs
Ms. Jean Lovell
Judge Robert R. Moran
Judge Bernard Sprague
Mr. John D. Cariotto, Secretary
Dr. Chris W. Eskridge, Reporter
Judge D. Nick Caporale, Chairman

Chris Eskridge accepts full responsibility for the content of this particular article. An earlier version of it was presented at the Annual Meetings of the American Society of Criminology, November 1984, and was published in *The Champion,* May 1985 (Volume IX, Number 4).

[2] L.B. 489, L.B. 455, 88th Nebraska Legislature .

Under this definition, four states, Minnesota,[3] Pennsylvania,[4] Rhode Island,[5] and Washington,[6] now use guidelines virtually as the sole procedural form of sentencing statewide. A number of states, including Alaska, Connecticut, Delaware, Hawaii, Illinois, Indiana, Kansas, Louisiana, New Jersey, New Mexico, North Carolina, and Wisconsin now use or in the recent past have used such models for certain offenses (Cooper et al., 1982; Galvin, 1983; *Overview,* 1980). Specific courts in Arizona,[7] California,[8] Colorado,[9] Illinois,[10] Maryland,[11] North Carolina,[12] and Wisconsin[13] use some type of a presumptive sentencing guideline model (*Overview,* 1980). At least six states have established sentencing guidelines commissions, including Florida, Illinois, Minnesota, Pennsylvania, South Carolina, and Washington.

At least five states (Maryland,[14] Michigan,[15] Ohio,[16] Utah,[17] and Vermont[18] have developed nonstatutory, voluntary, statewide guidelines. The guidelines in these states have been developed by the judiciary and/or various committees and are not mandated, but serve only as suggested guides. No justification for departure from the model is required.

Numerous attempts have been made to adopt Federal sentencing guidelines. Senate Bill 1437, which included a sentencing guidelines provision, first passed the Senate in 1978 but died in the House. The bill was reintroduced in S.1722 in 1979, but the Senate adjourned without voting on it. The bill was reintroduced in 1981 as S.1555 and in 1982 as S.2572, but the measure failed each time. Finally in October 1984, sentencing guidelines were mandated at the Federal level. The notion was included as a provision of the Comprehensive Crime Control Act of 1984. The Federal guidelines are still being devised at this writing and are obviously yet to be implemented.

While many documents, monographs, papers, reports, and journal articles extol the virtue of sentencing guidelines, few offer any sound quantitative evaluation of impact. Indeed, the procedure is so new that a complete and clear analysis of impact is not yet available. Perhaps the most complete evaluation to date is that of the Minnesota project, *Preliminary Report on the Development and Impact of Minnesota Sentencing Guidelines* (1982). The results are somewhat encouraging as to the reduction of sentencing disparity. Of the 5,500 cases processed after the guidelines were in effect, only 6.2 percent departed from the grid. Furthermore, only 15 percent of those with crime severity levels of I or II and criminal history scores of 0 to 1 are currently being imprisoned, whereas 54 percent of similar offenders were imprisoned prior to use of the guidelines. However, some substantial negative impacts are evident. The decrease in the rate of admissions to state prisons has been accompanied by an increase in the rate of convicted offenders serving time in local jails. There is some evidence of continued racial disparity in sentencing patterns. Controlling for the severity levels and criminal history scores, minority offenders still received more severe sanctions than did whites, despite the fact that the guidelines were used. Finally, this 1982 report noted that uniformity in sentencing, the crux of the issue, had been limited. A more recent study by Knapp (1984) concludes that the Minnesota model has been "less successful in achieving sentence uniformity." This is not surprising in light of Carrow's (1984) review of voluntary sentencing guidelines in general, where Carrow found that they offer "little assurance of uniformity in sentencing."

At least one other state that has adopted mandatory presumptive sentencing has been able to restrict sentences and bring them within a preestablished grid. In a preliminary analysis of the impact of the standards adopted by Pennsylvania, Kramer (1983) found that 94.3 percent of all sentences were falling within the guidelines. The proportion of felony I offenders that were being sentenced within what are now the sentencing guidelines before the guidelines were created was found to be 44.8 percent. Subsequent to the development of the guidelines, Kramer found that 84.6 percent of the felony I offenders were being sentenced within the guidelines. Thirty and nine-tenths of felony II offenders sentenced before the guidelines were created were being sentenced within what are now the guidelines. Subsequent to the development of the guidelines, Kramer found that 89.0 percent of the felony II sentences were falling within the guidelines. The proportion of the felony III offenders that were being sentenced within what are now the sentencing guidelines before the guidelines were created was found to be 58.4 percent. Subsequent to the development of the guidelines, Kramer found that 85.9 percent of the felony III sentences were falling within the guidelines. An analysis of the variations within the guidelines and of the cases that fell outside the grid has not been undertaken. Recall that when such an analysis was undertaken in Minnesota, minority offenders were still found to receive more severe sanctions than whites, controlling for relevant factors.

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[3] 1978 Minnesota Laws, Ch. 723. This law went into effect in May 1980.

[4] Legislative Act 319 which passed in November 1978. Authorized the establishment of the Pennsylvania Commission on Sentencing. This Commission developed a set of guidelines which were approved by the state legislature in July 1982.

[5] Rhode Island has developed what it calls benchmark sentences, sentences based upon a matrix that only considers present offense characteristics. These nonvoluntary sentencing standards were adopted by the Rhode Island Supreme Court as of January 1, 1982.

[6] *Laws of Washington* 1981-1982, Ch. 192: Sentencing Reform Act of 1981.

[7] Arizona Rev. Stat. Ann. S 13-701, 702 (1978).

[8] Penal Code of California, Sec. 1170(a)(1).

[9] Denver Demonstration Model.

[10] Illinois Am. Stat. Ch. 38, S 1005-8-1 (1980-81 Supp.).

[11] Sentencing Guidelines Project of the Administrative Office of the Courts; September 30, 1979.

[12] N.C. Gen. Stat. SS14-1.1., 15A-1021, 15A-1340.1 through 1340.7, 15A-1380.1, 15A-1380.2, 15A-1414, 15A-1415, 15A-1442, 148-13.

[13] Wisconsin Felony Sentencing Guidelines have been used in eight counties since December 1982.

[14] Guidelines were developed by the Administrative Office of the Courts and were implemented in four jurisdictions in June 1981. They await statewide approval.

[15] Guidelines were implemented in March 1981 culminating a 3-year effort by Michigan Felony Sentencing Project staff, Michigan State Court Administrators staff, and representatives from the judiciary and the state bar. They await statewide approval.

[16] The Ohio State Bar Foundation developed a set of voluntary guidelines in 1977.

[17] A committee representing a number of governmental agencies developed a set of voluntary guidelines in 1978. Sentencing and parole decisions were placed within one matrix.

[18] Voluntary guidelines were developed by the judiciary and became effective February 1, 1982.

In a review of the impact of voluntary sentencing guidelines in four urban courts (Denver, Philadelphia, Chicago, and Newark, New Jersey), Rich et al. (1982) found guidelines had no measurable impact on judicial sentencing behavior. In short, they found that sentence disparity was not reduced and that a significant degree of noncompliance with the standards occurred. Total noncompliance, defined as noncompliance on the decision whether to incarcerate as well as on the minimum and maximum terms of imprisonment, occurred in 54 percent of the cases in Denver and in 48 percent in Philadelphia. Furthermore, judges in Denver provided written reasons for departing from the guidelines in only 12 percent of the cases. While on the surface these findings seem to contradict those of Minnesota, a *major* substantive difference must be noted. The Minnesota model is statutory and has the force of law, while the guidelines developed in the four urban courts are strictly voluntary. Consequently, Rich et al. concluded that in order for sentencing guidelines to structure sentencing discretion successfully, they must be given the force and effect of law. Rich et al. also suggested that the type of conviction (i.e., guilty plea, guilty plea flowing from a plea bargain, or trial conviction) be incorporated as one of the salient factors within the guidelines.

The State of Florida was the site of a National Institute of Justice pilot project designed to develop and test the feasibility of multicounty/regional sentencing guidelines. A 1982 evaluation (Florida State Court Administrator's Office, 1982) found that approximately 20 percent of the sentences given in the four judicial circuits under study fell outside the guidelines. On the basis of this, as well as a number of subjective observations, the authors concluded that sentencing guidelines were both feasible and desirable.[19] They also suggested that the development of regional guidelines would allow for the inclusion of local values in the mathematically derived guidelines. Due in large part to the apparent success of this project, Florida implemented statewide sentencing guidelines in 1983.[20] While no empirical evaluation of impact of the Florida guidelines is available, Griswold's (1985) preliminary review states that Florida's guidelines may not be promoting justice or fairness.

Drawing upon the conclusions reached from the initial Florida project, Rich et al. (1982) suggested the need for more than just pure statistical quantitative methodology in the development of sentencing guidelines, noting that local values and attitudes should also be included. Both studies further concluded that the technical expertise is available to enable a marriage between the statistical representation of sentencing practices and the normative element.

Such suggestions and conclusions are disturbing from at least two perspectives. Sentencing guidelines are ostensibly to be used to reduce disparity, yet the development of multicounty/regional guidelines would seem to perpetuate disparity. Movement in this direction would result in extreme variation in sentences in a state from region to region, precisely one of the problems guidelines are supposed to address. Secondly, attempts on the part of a sentencing guidelines commission to incorporate values and attitudes in a mathematical grid would turn the commission into a miniature legislature and place it in the midst of the political arena. Minnesota "suffered" from this problem (Minnesota, State Court Administrator's Office, 1982). Yet, in a realistic assessment the dynamics of sentencing are such that such problems probably cannot be avoided, unless a pure statistical model is developed solely on the basis of past sentencing practices.

Shane-DuBow (1985) found that nonstatutory, judicially developed guidelines were not capable of eliminating sentencing disparity in Wisconsin and Michigan, despite the adoption of the judicially developed guidelines model. The presumptive sentencing guidelines model was likewise not found to be without fault. Shane-DuBow found evidence of adjustments in prosecutorial charging and bargaining practices in jurisdictions where such a model has been developed. The development of a sentencing guidelines model of any type, she concluded, is merely "tinkering with the tail." The largest measure of discretionary abuse lies with the police and the prosecutor, and little or nothing can be done at a sentencing hearing to balance the scales of justice. Shane-DuBow also observed that legislative involvement in actual grid development has generally resulted in increases in sentence severity. This in turn has created intolerable situations with respect to prison populations. Martin (1981) observed and commented on the same phenomenon. As a result, Shane-DuBow recommends that legislatures stay out of the mechanics of actual sentencing grid development and that this responsibility be turned over to some type of commission. The commission charged with developing such a grid should determine the actual average time served for each offense and establish a matrix-derived sentence that is no longer and perhaps even slightly shorter than the current norm. This will serve to alleviate pressure on prison populations.

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[19] Only 3.379 of the 6,826 cases originally selected for analysis could be used. This data loss calls into question the validity of the empirical portion of this analysis.

[20] S.D.410; April 7, 1982.

The State of California did not heed this counsel. The California legislature became intimately involved in establishing very narrow and very specific sentencing options. Since it implemented the Determinate Sentencing Bill on July 1, 1977, the proportion of convicted individuals who receive an incarceration sentence has risen precipitously. As a result, the state correctional facilities are now functioning at 135 percent of capacity with no relief in sight. In fact, the legislature recently dabbled once again and increased the severity of the sentences (Kramer, 1983).

Massachusetts Superior Courts used sentencing guidelines on an experimental basis from May 1980 until May 1981. A study of the Massachusetts project was undertaken by Stecker and Sparks (1982). The authors found evidence of continued racial disparity in sentencing practices despite the existence of the guidelines. Judges were also uncomfortable with the guidelines, finding them to be too mechanical and complicated (Shane-DuBow, 1985: 152). As a result, Massachusetts has abandoned the use of sentencing guidelines.

Clarke (1984) uncovered a more positive impact of sentencing guidelines in his study of the North Carolina model. Specifically, he found that guidelines yielded a decrease in racially disparate sentencing patterns and more predictability in sentencing practices in general. In sum, he concluded that the guidelines brought about "change in the direction desired by its proponents" (1984: 152). He does note however, that this was only a 1-year study. Historically, highly visible criminal justice system reforms have often suffered from a Hawthorne effect. They fare well in their initial application, yet ways of circumventing the reforms soon arise, and the system reverts to its slightly modified, but still very traditional, patterns and practices, yielding a slightly modified but still very customary impact. A possible Hawthorne effect notwithstanding, some attention must be directed to the North Carolina model, given the apparent preliminary success of this effort.

A guidelines model, similar in nature to the sentencing guidelines model, has been used in at least one related criminal justice area. Several years ago, concerns over parole release decision disparity in the Federal system caused the United States Parole Commission to develop parole decisionmaking guidelines. But a General Accounting Office (GAO, 1982) review of the actual impact of those guidelines was quite critical. Among other observations, GAO found a lack of consistency in the parole release decisions despite the existence of the guidelines. Lack of information necessary to apply the guideline matrix model was especially problematic. Approximately 42 percent of the case files did not contain sufficient information needed to even apply the parole guidelines. And even in situations where information was available, outright errors were made in 53 percent of the cases. At times, the GAO study noted, Parole Commissioners seemed to simply establish their own rules—some offenders, not even eligible by law for parole, were nonetheless given parole hearings and were released. As is often the case with judges, the GAO study found that Parole Commissioners tended to operate autonomously. They made little effort to coordinate general operations and decisionmaking activities between themselves. From all available evidence, it appears that the parole release guidelines were circumvented, ignored, and misapplied, and had little if any of their planned or desired impacts. There is reason to believe that similar problems would be experienced if a judicial sentencing guidelines model were to be implemented.

Conclusions and Recommendations

In sum, presumptive sentencing guidelines as implemented to date have not had the impacts anticipated by guideline proponents. There is some evidence, in fact, that sentencing guidelines may only be making the problem worse. In other words, the cure may be worse than the ailment. Presumptive sentencing guidelines, therefore, should not be adopted.

Rather than trying to force judges to conform by establishing sentencing standards (and we are not sure that judges in actual practice can actually be forced anyway, for there will always be ways for judges to get around any sentencing standards), it is proposed that a more subtle, peer group socialization approach be used. Rather than using the hammer, rather than a frontal assault on their turf, rather than challenging their bailiwick, the velvet glove should be utilized to change judges. Sentencing consensus should be reached through nonthreatening means. For example, statewide sentencing reporting systems should be developed and a simplified report disseminated regularly so that judges will know what sentences are being imposed for various crimes across their states. It is hypothesized that many if not most of the judges will keep abreast of the general sentencing practices of their peers and will make the adjustments necessary so as to be in line, or at least not too far out of line, with the rest of their reference group.

Sentencing conferences or seminars should be held regularly. Among other activities, such seminars should include mock case sentencing exercises. In such exercises participants would sentence on the basis of the information found within fictitious case files and subsequently share the sentence decision and reasoning with fellow participants. Such discussions should focus upon general principles and issues and should examine the specifics and rationale of sentences imposed both in the role playing and on the bench. Again, the thought is that peer group pressures will both consciously and unconsciously cause a basic settling toward the mean. In a way, this notion is similar to a Delphi project. Typically the experts are rather far apart as to their predictions on the first round of a Delphi experiment. But as each learns of the others' perceptions, responses are modified, and there tends to be a very definitive reduction in the range of the responses, i.e., a general shifting toward the mean. The same is expected to occur in a mock case sentencing exercise.

Court watch programs could be started, though they are somewhat more threatening to judges than the previous two proposals. Court watch programs, often staffed by citizen volunteers, openly monitor court sentencing decisions and through some measure of public presence and pressure, tend to move judges toward a standard of community desired conformity. There is some evidence that court watch programs can yield some degree of sentence uniformity, particularly in situations where significant sentencing variation had existed (Court Watch Project, 1975). There is another aspect to consider as well. Recall that one major criticism of sentencing guidelines is the fact that they tend to force the true sentencing decision into prosecutors' private chambers. Sentencing decisions should be open. But they should be more than just open, they should be monitored to insure at least some degree of fairness. Of course, just because a decision is made in an open, formal setting, does not insure fairness. Disparities will still exist, but they will pale in comparison to the inequities that would be perpetrated were sentencing decisions regularly made in the informal settings behind the closed doors of the prosecutors' offices. Open, monitored proceedings are not a panacea, just the less objectionable option of the two. There is, however, at least one nagging dimension haunting the actual establishment of court watch programs. The nation as a whole has become quite conservative in its perspectives on crime and justice. While court watch programs are being proposed in this article as a means to distribute more equitable justice by tightening sentencing practice, they may surface as tools for community vigilante groups. With a court watch program circulating information regarding sentencing practices, judges, fearful of raising a community's ire, may begin issuing sentences that are uniform but harsh, unjustifiably harsh. Consequently they would be fulfilling the mandate of uniform sentencing, but defeating the underlying premise of a court watch program as suggested in this article, that of distributing justice more equitably. Again, issuing uniformly harsh sentences fulfills the lesser principle of uniformity, but violates the greater principle of fundamental fairness and justice. Court watch programs should be put into place so as to openly monitor court sentences and, through some small measure of public presence and pressure, move judges toward a greater degree of sentence uniformity, but care must be taken not to allow the court watch program to have a vigilante effect.

A strong recommendation is made that state and local legislation be sought to enable sentencing judges to review and modify their own sentences under certain limited conditions, such as within 90 days. This would allow judges the opportunity to bring their sentences more in line with the prevailing standard when and if they, for various reasons, failed to do so at the original sentencing hearing. They should probably only be able to moderate the original sentence at the resentence hearing.[21]

Summary

1. Some evidence of sentencing variation does exist in the State of Nebraska and in most, if not all, other states.
2. Some level of sentencing variation is not unexpected and is acceptable, insofar as it is a reflection of valid variations in perspectives of different communities as to the seriousness of different crimes. Just when that acceptable variation becomes unacceptable, however, is unclear.
3. While there is no consensus (and probably never will be) as to just what does not constitute sentencing disparity, the sentencing disparity issue has reached the political agenda, and many groups are now calling for change.
4. The adoption of a presumptive sentencing guidelines model has been proposed as a means of yielding that change—more specifically of reducing the level of sentencing variation/disparity that exists. Several states are now in the process of experimenting with various forms of sentencing guidelines. The procedure is so new, however, that a complete and clear analysis of its effects is not yet available. According to the

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[21] The original report of the Nebraska Supreme Court Committee on Sentencing Guidelines stated that legislation should be sought to permit judges to enhance or moderate sentences. The present author feels that an enhancement provision would be a prime facie violation of the Eighth Amendment protection against double jeopardy and would thus suggest that judges be allowed the opportunity to moderate only.

available literature, sentencing guidelines do not seem to effect a significant reduction in sentencing variation/disparity. Judges are able to easily sidestep the standards if they are so inclined. Furthermore, considerable evidence exists which suggests that sentencing guidelines do little more than increase the exercise of the discretionary powers granted to the police, parole boards, and prosecutors—particularly that of prosecutors, who through the plea bargaining practice, would in essence become the sentencing body. Would justice be better served if prosecutors were making decisions in closed offices or if judges were making decisions in open court? Sentencing guidelines provide little or no control over prosecutors' offices, agencies which already have a large measure of relatively unchecked discretion within the criminal justice system. Sentencing guidelines grant prosecutors even more unchecked power. Of additional concern, several states which have adopted sentencing guidelines have experienced significant increases in their jail and/or prison populations and have not reduced the severity of sentences for minorities. In sum, the author believes that the use of presumptive sentencing guidelines as a response to sentencing disparity may actually cause more problems than it cures. Consequently, the recommendation is made that presumptive sentencing guidelines not be adopted.

5. As an alternative to the adoption of presumptive sentencing guidelines, the recommendation is made that a statewide sentencing reporting system be developed and that sentencing information be regularly disseminated to all Nebraska judges. Secondly, sentencing conferences and seminars should be held on a regular basis. Thirdly, court watch programs should be implemented specifically to monitor judicial sentencing practices. Lastly, legislation should be sought that would grant sentencing judges the power to review and modify their own sentences within a specific time period subsequent to imposition.
6. In sum, rather than trying to force judicial conformity, a more gentle, peer group socialization approach should be utilized. The courts can be moved, but not with a hammer, not with a show of force. Sentencing guidelines probably only make matters worse from the overall view and should be avoided.

Judicial reform is political reform, and judicial reform is slow because political reform is slow. Sentencing guidelines were a "hot" topic several years ago, but the available literature now seems ready to pronounce a benediction. Yet there is Congress passing the Crime Control Act of 1984 which mandates the development of sentencing guidelines on the Federal level. While the justice system has shucked the lockstep, it is still plagued with the out-of-step, and as long as justice and politics are married, the practice of justice will continue to suffer.

REFERENCES

Carrow, Deborah M. (1984) "Judicial Sentencing Guidelines: Hazards of the Middle Ground," *Judicature*, Vol. 68 (4/5).

Clarke, Stevens H. (1984) "North Carolina's Determinate Sentencing Legislation," *Judicature*, Vol. 68 (4/5).

Cooper, Caroline S., Debra Kelley, and Sharon Larson (1982) *Judicial and Executive Discretion in the Sentencing Process: Analysis of State Felony Code Provisions*. Washington, D.C.: Criminal Courts Technical Assistance Project, Institute for Advanced Studies in Justice, Washington College of Law, American University.

Court Watch Project (1975) *A Citizen's Study of Franklin County Municipal Court*. Columbus, Ohio: Academy for Contemporary Problems.

Diamond, S.S. (1981) "Exploring Sources of Sentencing Disparity," in B. D. Sales (ed.) *The Trial Process*. New York: Plenum.

Diamond, S.S. and Haus Zeisel (1975) "Sentencing Councils," *University of Chicago Law Review*, Vol. 43, pp. 109-149.

Florida State Court Administrator's Office (1982) *Multicounty/Regional Sentencing Guidelines Project: Final Report*. Tallahassee, Florida: State Court Administrator's Office.

Frankel, Marvin E. (1981) "A Commission on Sentencing," in Hyman Gross and Andrew von Hirsch (eds) *Sentencing*. New York: Oxford University Press, pp. 348-351

Galvin, Jim (1983) *Setting Prison Terms: 1983*. (Preliminary Draft) San Francisco, California: National Council on Crime and Delinquency.

Gottfredson, Don (1981) "Sentencing Guidelines," in Hyman Gross and Andrew von Hirsch (eds) *Sentencing*. New York: Oxford University Press, pp. 310-314.

Government Accounting Office (1982) *Federal Parole Practices*. Washington, D.C.: General Accounting Office.

Griswold, David B. and Charles Massey (1982) "A Critical Comparison of Florida's Parole and Sentencing Guidelines." Paper presented at the Annual Meeting of the American Society of Criminology, Toronto, Canada.

Griswold, David B. (1985) "Florida's Sentencing Guidelines: Progression or Regression" *Federal Probation*, Vol. 49(1), March 1985, pp. 25-32.

Horney, Julie (1982) Memo to Nebraska Supreme Court Chief Justice Norman Krivosha regarding the Sutton criminal sentencing study, Lincoln, Nebraska.

Knapp, Kay A. (1984) "What Sentencing Reform in Minnesota Has and Has Not Accomplished," *Judicature*, Vol. 68 (4/5).

Kramer, John and Anthony Scirica (1983) "Pennsylvania's Sentencing Guidelines: Just Deserts Versus Individualized Sentences." Paper presented at the Annual Meeting of the Academy of Criminal Justice Sciences, San Antonio, Texas.

Lagory, Stephen, Frederick Hussey, and John Kramer (1978) "A Comparative Assessment of Determinate Sentencing in the Four Pioneer States," *Crime and Delinquency*, Vol. 24 (2).

Martin, Susan E. (1981) *The Politics of Sentencing Reform: A Comparative Case Study of the Development of Sentencing Guidelines in Pennsylvania and Minnesota*. Washington, D.C.: National Research Council.

McCarthy, John P. (1979) *Report of the Sentencing Guidelines Project to the Administrative director of the courts*. Newark, New Jersey: New Jersey State Administrative Office of the Courts.

Miller, J. L., Marilyn McCoy Roberts, and Charlotte A. Carter (1981) *Sentencing Reform: A Review and Annotated Bibliography*. Williamsburg, Virginia: National Center for State Courts.

Minnesota State Court Administrator's Office (1982) *Preliminary Report on the Development and Impact of the Minnesota Sentencing Guidelines*. St. Paul, Minnesota: State of Minnesota.

National Institute of Law Enforcement and Criminal Justice (1978) *Multijurisdictional Sentencing Guidelines Program Test Design*. Washington, D.C.: U.S. Department of Justice.

Neubauer, David (1984) *America's Courts and the Criminal Justice System*. Monterey, California: Brooks/Cole.

Overview of State and Local Sentencing Guidelines and Sentencing Research Activity (1980) Washington, D.C.: Criminal Courts Technical Assistance Project, Institute for Advanced Studies in Justice, Washington College of Law, American University.

Partridge, Anthony and William Eldridge (1974) *The Second Circuit Sentencing Study: A Report to the Judges of the Second Circuit*. Washington, D.C.: U.S. Government Printing Office.

Proceedings, *Determinate Sentencing and the Impact on Corrections* (1978) Symposium sponsored by Long Beach State University and the National Institute of Corrections, Long Beach, California.

Rich, William, L. Paul Sutton, Todd Clear, and Michael Saks (1982) *Sentencing by Mathematics: An Evaluation of the Early Attempts to Develop and Implement Sentencing Guidelines*. Williamsburg, Virginia: National Center for State Courts.

Shane-DuBow, Sandra (1985) *Sentencing Reform in the United States: History, Content, and Effect*. Washington, D.C.: National Institute of Justice.

Stecker, Bridget A. and Richard F. Sparks (1982) "Removing the Effects of Discrimination in Sentencing Guidelines." Paper presented at the Annual Meeting of the American Society of Criminology, Toronto, Canada.

Sutton, Paul L. (1978) *Predicting Sentences in Federal Courts: The Feasibility of a National Sentencing Policy*. Washington, D.C.: U.S. Department of Justice.

Sutton, Paul L. (1981) *Criminal Sentencing in Nebraska: The Feasibility of Empirically-Based Guidelines*. Williamsburg, Virginia: National Center for State Courts.

Twentieth Century Fund Task Force on Criminal Sentencing (1976) *Presumptive Sentencing*. New York: McGraw Hill.

U.S. Department of Justice (1973) *Federal Bureau of Prisons Statistical Report, Fiscal Years 1971-1972*. Washington, D.C.: U.S. Government Printing Office, pp. 96-101.

Wilkins, Leslie, Jack Kress, Don Gottfredson, Joseph Coplin, and Arthur Gelman (1978) *Sentencing Guidelines: Structuring Judicial Discretion, Report on the Feasibility Study*. Washington, D.C.: U.S. Department of Justice.

Zalman, Marvin, Charles Ostrom, Phillip Guilliams, and Garret Peaslee (1979) *Sentencing in Michigan*. Lansing, Michigan: Michigan State Court Administrator's Office.

News of the Future

RESEARCH AND DEVELOPMENT IN CORRECTIONS

BY JOHN P. CONRAD

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THINKING ABOUT THE WICKED

LAST NOVEMBER, at the annual meeting of the American Society of Criminology, my friend John Irwin received the Vollmer Award for practical contributions to the understanding of crime and criminals. It was deserved, as any reader of *The Felon, Prisons in Turmoil,* and his most recent book, *The Jail,* must be well aware. In accepting, Irwin chose to deliver a short address excoriating James Q. Wilson and Richard J. Herrnstein for their resurrection of the "bogeyman theory of crime." By that he was referring to their recent and massive review of criminological research[1] which, he thought, led to the argument that criminals are born, not made.

Irwin's denunciation of Wilson and Herrnstein was understandable but mistaken. He was not alone. Another good friend of mine, a distinguished correctional administrator, called me at long distance to urge that I should take up the cudgels in a resounding refutation of Wilson-Herrnstein and all their works. He hadn't read the book but he didn't like what he'd heard about it.

Many of the early reviews seized on their discussion of the possible genetic influences that predispose some young men to criminal behavior. I first heard of the book on the Public Broadcasting System program, "All Things Considered," which included brief interviews with the authors on several successive days. The impression I gained was that Wilson and Herrnstein were overboard on the nature side of the Nature/Nurture debate. I wondered whether Wilson thought that he had finally discovered why some people are wicked, thereby justifying his famous conclusion in *Thinking About Crime:*

> Wicked people exist. Nothing avails except to set them apart from innocent people.[2]

I have now read the book, and the first thing to be said about it is that the authors are a long way from the over-simplification that Irwin attributed to them. This is a valiant attempt to construct a grand theory of criminality from the findings of criminological research. It is annotated to the point of intimidation. The bibliography is 53 pages of fine print, comprising well over a thousand references extending from Aristotle to Marvin E. Wolfgang. The authors mention, quite credibly, that in preparing *Crime and Human Nature* they had foregone many a weekend at the beach and many an afternoon of tennis as gratifications they had had to defer in the interests of social science.

We should be grateful. Whether we like their theory or not, they have contributed a synthesis of criminological knowledge that takes us to "the limit of what can be learned from available or easily gathered data."[3] It has given me a lot to think about and will surely give both academicians and practitioners cause to reconsider the basis for their positions. The realistic prospect is that the principal audience for a book of this size will be graduate students preparing for doctoral comprehensives and their mentors. Who else has the time to plow through 535 pages of closely reasoned text, checking the references as they go along? The authors do their best to engage their readers' attention. Wilson is an accomplished writer who avoids jargon and has the enviable knack of articulating a complex idea briefly but intelligibly, and evidently Herrnstein, whose work I had previously known only by reputation, has the same talents. I hope that I can lure my readers into a serious study of their book.

THE GRAND THEORY

It will be no news to readers of Wilson's earlier writing that he is profoundly dissatisfied with the state of criminological theory. The authors show why they are dissatisfied with the best-known sociological theories of crime (strain, control, and cultural deviance), because none of them account for the noncriminals who are exposed to the social influences that account for the behavior of criminals. Thus, although a lot of young men who get nowhere in the Cloward-Ohlin legitimate opportunity structure commit crimes as an alternative avenue to satisfaction, there are a lot of other young men who find themselves in exactly the same predicament and don't commit crimes.[4] The same could be said of all the sociological theories. In their defense, of course, all three theories suggest social interventions that might be undertaken to reduce crime, though I know of no sociologist who will claim to have a formula for its elimination.

But Wilson and Herrnstein want a comprehensive theory that will be "larger" so as to "keep before our eyes the full range of factors that cause individual differences in criminality."[5] They propose their theory early in their book and devote the rest of it to considering the supporting research. They put their theory in simple language; it amounts to this:

> The larger the ratio of rewards (material and nonmaterial) of noncrime to the rewards (material and nonmaterial) of crime, the weaker the tendency to commit crimes. The bite of conscience, the approval of peers, and any sense of inequity will increase or decrease the total value of crime; the opinions of family, friends, and employers are important benefits of noncrime, as is the desire to avoid the penalties that can be imposed by the criminal justice system. The strength of any reward declines with time, but people differ in the rate at which they discount the future. The strength of a given reward is also affected by the total supply of reinforcers.[6]

From this bland paragraph the authors derive a surprising number of implications. If punishment is swift and certain, crime will be less probable. If punishment is perceived as inequitably severe, offenders will be so angered by their treatment as to recidivate. If potential criminals are impulsive or "present-oriented," they will discount future rewards or punishments for immediate gain. And so on.

The authors concede that their theory is eclectic, and they are unabashed in stating its foundation in behavioral psychology. For them a criminal is a person who fits into their theory when he is constitutionally distinctive (I will get around to this awkward term later), male, young, dull in intelligence, and classically psychopathic (see Cleckley's 16 traits[7]). But a young man may possess all these characteristics without being a criminal. He is merely at risk under the above theory, and a poor family background,[8] ineffective schools, community disorganization, unemployment, and use of alcohol and drugs will push the risk toward serious and repetitive crime.

All these characteristics and influences can be expressed in mathematical equations, though how this helps in understanding or in deriving further elaborations of the theory we have to take for granted in an impressively elaborate set of equations. We have a theory that will account for any kind of crime committed by any kind of criminal, but it is left to the reader to decide what to do with it.

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[1] James Q. Wilson and Richard J. Herrnstein. *Crime and Human Nature*. (New York: Simon and Schuster, 1985, pp. 639).

[2] James Q. Wilson. *Thinking About Crime*. (New York: Basic Books, 1975, 2nd Edition, 1983), p. 260.

[3] Wilson and Herrnstein, p. 513.

[4] Richard A. Cloward and Lloyd E. Ohlin. *Delinquency and Opportunity*. (New York: Free Press, 1960).

[5] Wilson and Herrnstein, p. 42.

[6] *Ibid.*, p. 61.

[7] Hervey Cleckley. *The Mask of Sanity*. (Saint Louis: Mosby, 1964).

[8] The authors rely considerably on Sheldon and Eleanor Glueck here, especially their concept of the "under-the-roof culture." See their *Unraveling Juvenile Delinquency*. (Harvard University Press, 1950).

"MORE RESEARCH. . ."

Wilson and Herrnstein know what they want to do. More research, based on the theory, is needed for the purposes of policy guidance—longitudinal research with large samples beginning with the early childhood of a cohort and followed through relentlessly with all the variables called for by the grand theory. How many children who are dull normal in intelligence, mesomorphic in physique, beginning criminal activity at what age and ending it at what later age, and possessing the classical psychopathic characteristics can be discovered in this cohort, and what about their families, the schooling received, their introduction to drugs and alcohol? I have always advocated research of this kind, and I've engaged in modest enterprises of this kind myself. What Wilson and Herrnstein have in mind is an enormous project spanning more years than these middle-aged savants can devote to its completion. It ought to be done in the hope that understanding will improve control. The final results may be far in the future, but along the way we will be learning from the interim findings.

Some readers will be surprised to see Wilson giving so much attention to the causes of crime. In *Thinking About Crime* he was rather hard on the humble criminologist "concerned with causal explanations. . .[and operating] within an intellectual framework that makes it difficult or impossible to develop reasonable policy alternatives. . ."[9] He went on to argue that a "policy oriented analysis of crime would place a heavy emphasis on the manipulation of objective conditions. . .because behavior is easier to change than attitudes. . ." In an essay published elsewhere, Wilson explains himself. "Given what we knew then and know now, acting as if crime is the result of individuals freely choosing among competing alternatives may be the best we can do." But, he goes on to say. "With time and experience we have learned a bit more about what works. There are now some glimmers of hope that certain experimental projects aimed at preparing children for school and equipping parents to cope with unruly offspring may reduce the rate at which these youngsters later commit delinquent acts."[10] Unfortunately the only project cited in *Crime and Human Nature* is a glimmer indeed. A controlled experiment in Ypsilanti, Michigan for preschool children, most of them from welfare families, most of them with below average IQ's, produced a somewhat better result for the children exposed to the program than for those who were not— one third of the experimentals reported five or more offenses by the age of 15, whereas one-half of the controls had been delinquent to that extent.[11] The implicit hypothesis here is that children at risk are best helped at the pre-school age, and intuitively I find this a plausible notion. I hope that somewhere someone is attempting a longitudinal study of children exposed to the Head Start program. If such a study is under way, I'm unaware of it, and by this time some findings should be available if long-range research has been undertaken.

BORN AND MADE

In spite of misunderstandings to the contrary, Wilson and Herrnstein firmly deny that any child is born alive to become a criminal. Like any other social scientists, they agree that the environment produces criminality not the genes. They do believe, however, that some people are born with natures that predispose them to acting on impulse, to seizing on immediate gratifications and refusing to defer them. They are present-oriented and unable to consider long range consequences in making decisions about their conduct. Their shorthand phrase for this condition is "constitutionally distinctive," and it is the introduction of this characteristic into their theory of criminality that troubles John Irwin among many others.

The evidence cited in support of the genetic origins of this kind of personality—which, mind you, doesn't necessarily lead to criminal behavior—consists of some Scandinavian twin studies showing that separated identical twins are more likely to behave alike than fraternal twins, the ancient Sheldon somatotype studies that impressed the Gluecks so much, and some XYY chromosome studies that are suggestive, if not conslusive, to our authors.

No one who has any personal experience with criminals will deny that the traits of the psychopathic personality described by Cleckley are certainly to be found in any probation caseload or any prison cellblock. And no criminal justice practitioner is going to deny that dull normal intelligence is over-represented in the criminal population.

The origins of the traits we refer to as psychopathic are still open to dispute. I have an alternative explanation to the constitutional distinction that Wilson-Herrnstein infer from their neo-Lombrosian studies. Children growing up in the burgeoning American under-class may be understood if they don't defer gratification—what gratifications come their way had better be seized immediately before they go out of reach. To act on impulse may make better sense to such a child than buckling down to school books on the understanding that the pie up there in the sky will go to the boy with good grades and deportment. And as to intelligence tests, in which Wilson and Herrnstein place more trust than most contemporary psychologists will allow, two reservations occur to me. First, they call for motivation to succeed, and children in the parts of town that produce the most criminals learn very early that success on pencil and paper tests is not to be expected. Second, and not at all speculative, the IQ tests administered to prisoners upon their reception are biased downward by the depression and anxiety common to almost all people entering that miserable status.

For all that these and other reservations may matter, it may be more or less true that there are genetic influences that make some people more vulnerable to crime than others. We cannot even imagine any genetic engineering that will correct these deficiencies. What we can do is to find ways of modifying the environment in which underclass children are nurtured so that the vulnerability of the nature with which they are born will not turn them into predators. In spite of our authors' disdain for sociologists, the major tasks to be undertaken to bring about this modification of the culture must be assigned to sociologists, political scientists, and criminal justice practitioners.

In his essay on *The Rediscovery of Character*, Wilson allows a more hopeful prospect on the future of our culture, the culture that produces so many criminals as well as so many admirable citizens. Read on:

> It is easier to acknowledge the necessary involvement of government in character formation than it is to prescribe how this responsibility should be carried out. The essential first step is to acknowledge that at root, in almost every area of important public concern, we are seeking to induce persons to act virtuously, whether as schoolchildren, applicants for public assistance, would-be lawbreakers, or voters and public officials. Not only is such conduct desirable in its own right, it appears now to be necessary if large improvements are to be made in those matters we consider problems: schooling, welfare, crime, and public finance.[12]

Who could disagree? And how is the vast increase in private virtue that we need to be brought about? Wilson and Herrnstein do not tell us, but this is a nation that must rediscover virtue, and soon.

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[9] *Thinking About Crime*, p. 50.

[10] James Q. Wilson. "The Rediscovery of Character: Private Virtue and Public Policy," *The Public Interest*. Number 81, Fall 1985, p. 14.

[11] Wilson and Herrnstein, p. 284.

[12] Wilson, op. cit., p. 15.

Looking at the Law

BY LISA A. KAHN

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EFFECT OF DISCHARGE IN BANKRUPTCY ON RESTITUTION ORDER

Until recently, Federal courts had consistently held that a probationer's obligation to make restitution was not affected by an order of a bankruptcy court discharging the probationer from his debts. As noted in a previous column on this subject,[1] it made relatively little difference whether a discharge in bankruptcy was ordered prior to the imposition of a restitution condition or after a probationer was already subject to an order of restitution. Under decisions of the Fifth and Seventh Circuits, a person who had been adjudicated a bankrupt could nevertheless be required by a court to pay restitution to his victims in the event such person were subsequently convicted of a criminal offense. See *United States* v. *Alexander*, 743 F.2d 472 (7th Cir. 1984), and *United States* v. *Carson*, 669 F.2d 216 (5th Cir. 1982). Additionally, several United States bankruptcy courts had held that restitution ordered by a state court as a condition of probation was not a debt contemplated by the Federal Bankruptcy Code and therefore was not subject to being discharged in bankruptcy. See *In re Pellegrino*, 42 B.R. 129 (Bankr. D. Conn. 1984); *In re Johnson*, 32 B.R. 614 (Bankr. D. Colo. 1982); *In re Magnifico*, 21 B.R. 800 (Bankr. D. Ariz. 1982).

The conclusion reached in the above-noted line of bankruptcy court opinions has been called into question by a 1985 decision of the Second Circuit. That case, *In re Robinson*, 776 F.2d 30 (2d Cir. 1985), involved a state probationer who had been ordered, as one of the conditions of her probation, to make restitution to the state public assistance office for welfare benefits she had wrongfully received. Subsequent to this restitution order, the probationer filed a voluntary petition under Chapter 7 in United States bankruptcy court. The bankruptcy court filed an order discharging the probationer "from all dischargeable debts." The probationer contended that her restitution obligation was a debt within the meaning of the Bankruptcy Code,[2] and that it was not excepted from discharge by any exceptions contained in the law.[3]

The Second Circuit agreed with the probationer's interpretation of the Bankruptcy Code. According to the Court of Appeals, any right to payment of criminal restitution is a "claim," as that term is defined in 11 U.S.C. §101(11), and if any person or entity has a right to receive a payment of restitution from the bankruptcy debtor, the obligor has a debt within the meaning of the Bankruptcy Code. While Congress had taken pains in the law to specifically except from discharge debts which took the form of fines, penalties, or forfeitures "payable to and for the benefit of a governmental unit," it had failed to make a comparable exception for criminal restitution obligations.

In a concurring opinion in the *Robinson* case, Judge Mansfield expressed concern at what he termed the "unfortunate result compelled by the language of. . .the Bankruptcy Code." He noted with dismay the danger that a convicted criminal would resort to bankruptcy as a means of escaping his obligation to make restitution payments ordered by a court. To eliminate this loophole in the Bankruptcy Code, the judge suggested that Congress amend the law to specifically make criminal restitution payments nondischargeable in bankruptcy.

Perhaps in response to the judge's recommendation, a bill was introduced in the House of Representatives several weeks after the *Robinson* case was decided. The bill, H.R. 3742, would amend the bankruptcy law in such a way as to prevent the discharge in bankruptcy of restitution ordered as a result of the commission of a crime by the debtor. Hopefully the bill will be passed, and the possibility of defendants evading their restitutionary responsibilities by filing for bankruptcy will be effectively eliminated.

RESTITUTION—DETERMINING AMOUNT

Section 3651 of title 18, United States Code, provides that a defendant may be required, as a condition of probation, to make restitution "to aggrieved parties for actual damages or loss caused by the offense for which conviction was had." In imposing restitution under this section, courts obviously need to make a determination about the amount of loss which was caused by the offense. A survey of the case law shows that there are basically three accepted means of proving the amount of the loss: (1) by proof at trial, (2) by judicial determination, or (3) through the consent of the defendant. See, e.g., *United States* v. *Black*, 767 F.2d 1334 (9th Cir. 1985); *United States* v. *Harris*, 761 F.2d 394 (7th Cir. 1985); *United States* v. *Gering*, 716 F.2d 615 (9th Cir. 1983). While the amount of damages or loss set forth in an indictment often provides a helpful starting point in assessing the appropriate amount of restitution to order, a court is not limited to those figures. A trial judge may also take into consideration, for example, the amount of loss specified in the presentence investigation report. See *United States* v. *Harris, supra*, (judicial determination of the amount that defendants convicted of illegal receipt of government funds should pay as restitution upheld where such determination was based upon evidence presented at trial and in presentence report of government's actual loss due to the offense). Or, the court may choose to rely upon a stipulation of the parties regarding the amount of loss incurred by the victim of the offense. See *United States* v. *John Scher Presents, Inc.*, 746 F.2d 959, 963 (3rd Cir. 1984). It may be important, however, to advise defendants before entering into such a stipulation that the amount specified in the agreement could be used to fix the measure of restitution. See *United States* v. *Black, supra*, (court erred in using stipulation as basis for its award of restitution in excess of amount alleged in indictment where it was not clear that defendant had realized how stipulation would be used or whether government had intended it to serve that purpose).

In situations where a defendant pleads guilty to only certain counts of a multicount indictment, a question often arises as to the court's authority to impose restitution on the amount involved in the entire offense behavior. This problem was examined in some depth in a prior column (see "Looking at the Law," 46 Fed. Prob. 71 (September 1982)). Based upon a review of then current case law, the article observed that restitution orders for amounts exceeding that set forth in the indictment were generally upheld if the defendant admitted his responsibility for the entire amount and agreed, as part of the plea bargain, to make full restitution to the victims. A recent decision of the Third Circuit has adopted an even more flexible approach to determining restitution amounts in the context of a plea bargain. In *United States* v. *Pivirotto*, 775 F.2d 82 (3d Cir. 1985), a defendant pled guilty to two counts of a 35-count indictment charging mail fraud. As a condition of probation, he was directed to make restitution for approximately $989,000, even though the amount associated with the counts to which the defendant had pled was under $5,000. While there had been no mention of restitution in the terms of the plea bargain negotiated by the United States attorney and defense counsel, the court had made it very clear to the defendant during a lengthy colloquy before the plea was accepted that restitution would be imposed as part of probation. At the time of the sentencing hearing, the government had advised the court that the victims of the offense had lost a total of $989,218 as a result of the overall fraudulent scheme. Defense counsel did not dispute the figure and even appealed to the court to give his client the opportunity to make whatever restitution was necessary to make whole the victim of the offense. Under these circumstances, the court was unwilling to find that the restitution order was excessive.

If the reasoning used by the Third Circuit in *Pivirotto* is adopted by other courts, there may be an increased willingness to order restitution on counts for which the defendant has not been convicted when the offense involves some type of unitary scheme and it is difficult to establish that a single count caused a specific loss. While the facts of the *Pivirotto* case dealt specifically with a plea bargain situation, it is possible that its reasoning will be followed even in cases involving conviction after trial. An extension of *Pivirotto* in this fashion would mean that defendants convicted of offenses involving overall schemes to defraud (and perhaps conspiracies and other types of schemes as well) would be subject to restitution orders based upon the entire loss suffered by the victims of the offense, provided, of course, that the amount of this loss is not in dispute.

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[1] See "Looking at the Law," 48 Fed. Prob. 80,81 (December 1984).

[2] See 11 U.S.C. §101(11).

[3] See 11 U.S.C. §523.

EXPUNCTION OF CRIMINAL RECORDS

In what situations may a district court order the sealing and/or expunction of criminal records in the custody of the courts and executive branch agencies? On what basis would a court have jurisdiction to entertain such a request?

In some circumstances, statutory provisions exist which authorize a form of expunction remedy. For example, 21 U.S.C. §844(b)(2) permits a first-time drug offender who was not over 21 at the time of his offense to apply to the court for an expunction order. And, until the 1984 repeal of the Federal Youth Corrections Act (FYCA), 18 U.S.C. §5021 (1980) had provided for setting aside the conviction of a youth offender who was discharged early from probation or from the custody of the Attorney General. This provision had been interpreted in several cases to require a limited form of record expunction. See *Doe* v. *Webster*, 606 F.2d 1226 (D.C. Cir. 1979) (once court order setting aside conviction under the FYCA is transmitted to the F.B.I., conviction records must be physically removed from the central criminal files and placed in separate storage facilities and may not be opened except in the course of a bona fide criminal investigation by law enforcement authorities); *United States* v. *Doe*, 730 F.2d 1529 (D.C. Cir. 1984) (automatic set-aside of a conviction under the FYCA requires district court to remove from public access records of a set-aside conviction; however, Act does not restrict access to such records by law enforcement personnel or court officers who have legitimate law enforcement or judicial administrative purposes for consulting the records).

Apart from these statutory provisions, several courts have ruled that Federal courts have an "inherent equitable power" to order the expunction of criminal records "when necessary to preserve basic legal rights." See, e.g., *Shipp* v. *Todd*, 568 F.2d 133 (9th Cir. 1978); *United States* v. *McMains*, 540 F.2d 387, 389 (8th Cir. 1976); *Wilson* v. *Webster*, 467 F.2d 1282 (9th Cir. 1972). Such authority may be exercised when there has been an unlawful arrest or when the police have violated a defendant's constitutional rights, *Sullivan* v. *Murphy*, 478 F.2d 938 (D.C. Cir. 1973); where the arrest represents harassing action by the police, *United States* v. *McLeod*, 385 F.2d 734 (5th Cir. 1967); or where the statute under which the defendant was prosecuted was subsequently determined to be unconstitutional, *Kowall* v. *United States*, 53 F.R.D. 211 (W.D. Mich. 1971). See also *Menard* v. *Saxbe*, 498 F.2d 1017, 1023 (D.C. Cir. 1974); *Maurer* v. *Los Angeles County Sheriff's Department*, 691 F.2d 434, 437 (9th Cir. 1982). Other cases have held that a district court, sitting in a criminal prosecution, has ancillary jurisdiction to order expunction of the defendant's arrest records. See *United States* v. *Schnitzer*, 567 F.2d 536 (2d Cir. 1977); *Morrow* v. *District of Columbia*, 417 F.2d 728 (D.C. Cir. 1969). Regardless of the theory under which a court is found to have jurisdiction to order expunction of a criminal record, courts have cautioned that the power to expunge an arrest record is a narrow one, and should not be routinely used whenever a criminal prosecution ends in an acquittal, but should be reserved for the unusual or extreme case. *United States* v. *Linn*, 513 F.2d 925, 927 (10th Cir. 1975); *Shipp* v. *Todd*, *supra*, at 134.

Even in some extreme cases, expunction orders may not always be upheld. Take, for example, the recent decision of the Ninth Circuit in *United States* v. *G.*, 774 F.2d 1392 (9th Cir. 1985). "G" had originally been arrested and convicted on counterfeiting charges. Approximately 20 years thereafter, he requested the district court to expunge or seal all records in the possession of the court, the Department of Justice, and the Federal Bureau of Investigation which related to his case. "G" claimed that he was innocent of the crime, that he had participated in it solely as an informant for the Secret Service, and that he had been promised both a pardon and expunction in a binding agreement with the United States if, in order to preserve the undercover nature of his participation, he agreed to be convicted. A Presidential pardon had, in fact, been obtained by "G" 10 years after his conviction. Because all the Federal agents and attorneys involved with the case had died, and since the government files on the case had been destroyed, it was not possible for the court to substantiate the petitioner's claim. Nevertheless, the court complied with the defendant's request and entered an order requiring the expunction of all district court records relating to the case, as well as the sealing of all pertinent records in the custody of the F.B.I. and the Department of Justice.

In an appeal of the district court's order, the government claimed that the court had lacked jurisdiction to order the expunction. The Ninth Circuit was unable to rule on this point or to otherwise review the district court's order because no record was made of the facts concerning either the legal basis for the defendant's claim or his personal reasons for needing his record to be expunged. The court of appeals therefore found it necessary to vacate the district court's order. It is clear from this case that even in the most unique and compelling of circumstances, expunction orders are far from a routine business. Probationers and former defendants who inquire about the possibility of having their criminal records expunged should be advised that, no matter how long ago their offense occurred, how exemplary their lives have been since, or how insistent they may be on their innocence, courts are extremely reluctant to grant an order which is intended to eliminate all official references to the occurrence of what is, after all, a historical fact.

PROBATION REVOCATION—PRELIMINARY HEARING REQUIREMENT

The requirement that a probationer be afforded a preliminary hearing as part of the procedure to revoke probation does not apply if a probationer, at the time of his alleged violation, is living in a community treatment center (CTC) pursuant to a condition of his probation. This was the holding of the Seventh Circuit in *United States* v. *Saykally*, 777 F.2d 1286 (7th Cir. 1985). The source of the preliminary hearing requirement is Rule 32.1 of the Federal Rules of Criminal Procedure. Subsection (a)(1) of that rule requires that whenever a probationer is held in custody on the ground that he has violated a condition of his probation, he shall be afforded a prompt hearing before a judge or magistrate in order to determine whether there is probable cause to hold the probationer for a revocation hearing. The Advisory Committee Notes to Rule 32.1 explain, however, that no preliminary hearing is necessary "[i]f there is to be a revocation hearing but there has not been a holding in custody for a probation violation." Therefore, as long as a probationer is not held in custody prior to the final revocation hearing on the ground that he violated a condition of his probation, his liberty is not being infringed upon and there is no need for a hearing to establish probable cause. A probationer who is already subject to a probation condition requiring him to reside at a CTC is not being held in custody at the CTC on account of the alleged probation violation. Unless the probationer can establish that his status at the CTC has been changed or that he was otherwise deprived of his "conditional liberty" due to the charge of probation violation, *Saykally* makes it clear that there is no impropriety in dispensing with the requirement for a preliminary revocation hearing.

WITHHOLDING ADJUDICATION OF GUILT

Can a court withhold adjudication of guilt and place a defendant on nonreporting probation for a prescribed period of time? Not unless the statute under which the defendant is sentenced explicitly provides for such a procedure. This was the holding of the Eleventh Circuit in *United States* v. *Cannon*, 778 F.2d 747 (11th Cir. 1985). The defendant in that case had pled guilty to the falsification of Federal firearms forms. The court complied with a defense request that a formal adjudication of guilt not be entered in order to enable the defendant to retain his hunting weapons. The Eleventh Circuit agreed with the government that such a procedure was illegal. The authority to define and fix punishment for crime is legislative, and the authority to provide relief from the punishment fixed by law belongs to the executive. Unless a Federal law specifically empowers a judge to withhold adjudication and impose probation or any other sentence, such action may not properly be taken by a Federal court.

CREDIT FOR TIME SERVED

Section 3568 of title 18, United States Code, requires the Attorney General to give a person credit toward the service of his sentence for any days spent in custody in connection with the offense or acts for which the sentence was imposed. Occasionally defendants who believe they have been wrongly denied credit for time spent in custody prior to trial apply to a Federal court for relief. See, e.g., *Chua Han Mow* v. *United States,* 730 F.2d 1308 (9th Cir. 1984). Such an application was made recently in the case of *United States* v. *Short,* 623 F.Supp. 62 (D. Nevada 1985). Defendant Short had been held in a Montana prison because of a Federal detainer and was also in the custody of a United States marshal, both being in connection with a Federal offense for which a term of imprisonment was subsequently imposed. Because he believed he was entitled to credit for the time spent in custody, Short filed a Rule 35 motion to reduce his sentence with the sentencing court.

The motion was denied. While it is true that a Federal defendant would be entitled to credit toward his sentence if the sole reason he was denied release on bail as to state charges was the existence of the Federal detainer (see *United States* v. *Dovalina,* 711 F.2d 737, 740 (5th Cir. 1983); *United States* v. *Blankenship,* 733 F.2d 433, 434 (6th Cir. 1984)), a defendant should make application for such credit to the Bureau of Prisons, not the sentencing court.[4] *See United States* v. *Clayton,* 588 F.2d 1288, 1292 (9th Cir. 1979); *Chua Han Mow* v. *United States,* supra, at 1313. It is only when a prisoner has exhausted his administrative remedies that he becomes entitled to litigate the matter in district court. Thus, while the District of Nevada denied Short's Rule 35 motion, it suggested that if the administrative authorities failed to act within a reasonable time, or acted by denying credit, recourse to Federal court might then be appropriate, either in the form of a petition for a writ of mandamus or for a writ of habeas corpus under 28 U.S.C. §2241.

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[4] The Bureau of Prisons has established an Administrative Remedy Procedure through which an inmate can seek formal review of a complaint which relates to any aspect of his imprisonment. See 28 C.F.R. §§542.10-542.16 (1981).

Reviews of Professional Periodicals

CRIME AND DELINQUENCY

Reviewed by CHARLES L. STEARNS

"Capital Punishment and Corrections: Is There an Impending Crisis?," by Derral Cheatwood (October 1985). As of March 1, 1985, there were 1,479 persons on death row across the United States, and with a guesstimate of adding 150 to that number for each year, Derral Cheatwood suggests that the discipline of criminology must address these figures and their impact upon the criminal justice system as an unavoidable reality. As correctional professionals, we need to begin now to project where we are going and what we may expect when we arrive.

Rather startling, if we begin to execute those offenders on death row at the rate of one person a day, 6 days a week, year-round, it would be the fall of 1990 before we eliminated the present backlog. Given this reality, criminologists need to use their experience and expertise to examine alternatives in order to inform policy-makers as to the effects various alternatives may have.

Avoiding the traditional philosophical arguments and debates over empirical data, Cheatwood argues that there are but three options that corrections must consider—execution, commutation and concentration, or commutation and dispersal through the inmate population. Since it is unlikely that a final resolution is imminent, it is probable that the increasing numbers of persons awaiting execution will overcome the system, the public, and the media.

Of the three alternatives, Cheatwood believes that based upon "best estimates" and "most reasonable conclusions" from the data and our national history, it is likely that we will balk at executing large numbers of people.

It is more probable that a scenario will develop in which statutes would be created, returning large numbers of persons under sentence of death into an inmate population with some sort of life without release consideration.

The question then becomes whether they should be segregated in some super secure facility isolated from other inmates or whether they should be integrated in the general prison population. Treatment is given to both options with the pros and cons highlighted. It is obvious that none of the alternatives are good ones. Yet, we need to begin to pay close attention in view of sentencing patterns which imply that the need to choose an option for dealing with death row inmates will be an unavoidable reality sooner than we will be prepared to deal with them.

"The Effectiveness of Supervised Pretrial Release," by James Austin, Barry Krisberg, and Paul Litsky (October 1985). Public demand for greater restraint in pretrial release comes at a time when virtually all urban jails are tremendously crowded. This public policy dilemma of increased pressure to tighten controls on pretrial release together with the severe shortage of correctional resources thus becomes the subject of this article on the effectiveness of supervised pretrial release.

In this study, an experimental design with random assignment was used in three cities (Miami, Milwaukee, and Portland) to test whether defendants denied initial pretrial release can be later screened and released under close supervision without adversely affecting arrest and failure to appear rates.

This article provides a condensed summary and simplified overview of the major findings resulting from the 3-year evaluation, provides a discussion of the policy implications that flow from the analysis, and describes a model supervised pretrial release program for practitioners interested in implementing a similar program for their jurisdiction.

The results are generally positive with approximately 90 percent of the defendants not being arrested or becoming fugitives. These success rates were superior to rates for other forms of pretrial release. The article examined also predicting failure to appears and pretrial arrests, the costs of supervised pretrial release to victims, the impact on court dispositions of supervised pretrial release cases, the impact on jail crowding, and the cost of supervised pretrial release to the criminal justice system.

Though not addressed in this article, the reviewer believes that the issue of intrusion in the life of someone not yet convicted of an offense is an area of concern that needs attention before we expand what appears to be a successful and cost-effective intervention in the criminal justice system.

"The Probation Officers' Search for Credibility: Ball Park Recommendations," by John Rosecrance (October 1985). Using subjective data developed during a 15-year career as a probation officer and data from qualitative interviews with court personnel, John Rosecrance presents an ethnographic account of decisionmaking processes used by probation officers in preparing presentence recommendations.

He suggests that prior researchers have failed to consider fully two basic dynamics that influence presentence recommendations: (1) the reports are structured for an audience and (2) the probation officer uses the reports to establish and maintain credibility with that audience. The audience consists of probation administrators, the prosecuting attorney, and the judge.

In his view, probation recommendations frequently serve only to endorse prearranged judicial agreements, and when recommendations are other than ceremonial in nature, the range of recommendations is generally encompassed within narrow parameters. It is obvious from the content of his treatise that Rosecrance has a perception of the job totally opposite that of this reviewer. Somehow, he seems to portray the function of presentence investigation as some sort of a game with the goal of the probation officer to avoid criticism and to placate his audience, which incidentally does not include the offender or the offender's victims. The goal becomes having the recommendation in the "ball park."

It is fortunate that John Rosecrance no longer is preparing presentence reports. His jaundiced view of the function and the people performing it could lead him only to job dissatisfaction and incompetent performance. For those of us still imbued with the spirit of understanding the dynamics of the offender and individualizing recommendations to assist the offender and protect the community, presentence investigation is more than a play performed for the judge, prosecuting attorney, and probation administration. It is a vital service which enhances the effective administration of justice.

THE JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY

Reviewed by EUGENE H. CZAJKOSKI

"Offense Specialization and Escalation Among Status Offenders," by Susan K. Datesman and Mikel Aichkin (Winter 1984). How to handle the recalcitrant child is perhaps an eternal question among adults regardless of the size of the adult society. Lately, at least within Western cultures, childhood intractability has been minutely dissected so as to produce a multitude of categorizations both as to manifestation and as to etiology. Heavily settled on the gurgling morass of child-behavior analyses is a concern for sparing the child from stigma. Stigma avoidance is regarded as desirable in terms of holding a child safe from secondary punishment effects. It is also regarded as desirable because of the criminogenic results of stigmatizing a child. Thus, we have an elaborate apparatus for dealing with children who seriously misbehave in a manner different from dealing with adults who seriously misbehave. Different laws and different bureaucracies apply to juvenile offenders as contrasted with adult offenders. A good part of the difference depends on terminological manipulation (delinquency instead of crime, reformatory instead of prison, aftercare instead of parole, etc.) wherein descriptions of juvenile offender treatment are more medical or welfare in sound than descriptions of adult offender treatment (although with adults punishment is a more likely term than treatment).

The so-called status offender classification and the bureaucratic device of diversion are among the recent wrinkles in the awesomely convoluted pattern of juvenile offender management. A major issue addressed by the research reported in this article is whether processing by the juvenile justice system contributes to subsequently more serious delinquency. At the same time, the research examines the effects of various measures of offense specialization on the incidence of delinquency. In other words, the research examines the related hypotheses of escalation and specialization which impinge upon the underlying assumption for differential treatment of status offenders, i.e., status offenders specialize in status offenses and juvenile court intervention itself "escalates" youths into thinking of themselves as delinquent. Of course, the opposite assumption, formerly dominant in juvenile court theory, is that early intervention at the point of what might be called a status offense prevents progression into a more serious form of delinquency.

Data used by the researchers were collected as part of a national evaluation of deinstitutionalization programs for status offenders. The sample consisted of status offenders who were referred to the family court in Delaware during a 3-year period and involves a group processed before a deinstitutionalization program and a group processed following deinstitutionalization. Official records and self-report data were used. Analysis included race and sex categories.

Conclusions drawn from the study are, as usual, equivocal. While a case can be made for creating a specialized status offender group in that most of those youths never came back to court a second time, the self-report data showed that most status offenders admitted to some degree of delinquent activity so that only a few could be regarded as pure status offenders. This finding will hearten supporters of juvenile court jurisdiction over status offenders. There is no evidence of an escalating pattern wherein offenses became more serious as they increased in number. The researchers state: "The data also failed to support the labeling contention that status offenders who experienced court intervention continued to violate the law and become involved in more serious delinquency. The data do not demonstrate that official processing has no effect on producing delinquency but only that most youths labeled as status offenders do not reappear in court as delinquent offenders."

Whatever encouragement proponents of juvenile court handling of status offenders can find in this study, no similar encouragement can be found by supporters of diversion. It was discovered that "receiving services was no more effective in reducing recidivism than release after court intake." Also, there was no evidence that participants in the deinstitutionalization/diversion program had lower recidivism rates than those processed by the juvenile court prior to the inception of the program. "Moreover, it appears that diversion programs may be no less stigmatizing than the juvenile justice experience." However, there is the possibility that diversion programs have yet to be implemented properly.

Whatever we do to our system for dealing with the misconduct of our children, fundamental changes in outcome seem seldom realized. Further, our efforts seem to be little more than terminological tinkering easily transcended by irrepressible stigma.

"Self-Defined 'Desert' and Citizens' Assessment of the Police," by Edna Erez (Winter 1984). The popular issue of police-community relations is given impetus each time there is a dramatic episode of group disorder involving confrontation with agents of law enforcement. Although police have had to forcefully encounter rampaging students on occasion and striking workers on many more occasions, students or workers (and one might add numerous protest groups ranging from feminists to pacifists) have not engendered as much study of police-community relations as have blacks. Race riots in Detroit, Los Angeles, New York City, and Miami, disproportionately in terms of number, have spawned most of the interest in trying to understand and improve police-community relations. Accordingly, the research literature on this subject is largely focused on the police and the black community.

Obviously, police are the faucet which regulates the flow into the criminal justice system. They represent the crucial interface of the state and the citizenry. Public relationships with the police can be viewed from a conflict perspective or from a consensus perspective. Using a conflict approach, police are seen as the instrument of society's dominant power group employed to control disadvantaged or relatively powerless groups such as blacks and youths. Under this outlook, blacks can be seen as being adversely subjected to law enforcement efforts involving frequency of arrest, quality of treatment, and general police attention.

Under a consensus perspective, police work reflects agreed upon and shared values so that police are regarded as equally responsive to all groups.

The author works with the hypothesis that a group's perception of police relates to the direct experience that group has with the police. Negative experience presumably leads to negative regard.

Prior research has not shown actual police behavior to be consistently determined by the race of the community served. Nevertheless, research does show a rather consistent pattern of negative attitudes towards the police by blacks.

The study reported here attempts to illuminate the link between experience and assessment of the police. Exchange theory provides a framework for the study, specifically the idea of distributive injustice which occurs when a person does not get the amount of reward he expects in comparison with the reward another person gets. "This factor of 'desert' or fairness may lead to, or result in, differential evaluation of similar experiences with the police . . . ." In exploring this proposition, the author studied two groups likely to differ in their self definitions of "desert"; blacks and officially labeled offenders. Using the data collected in the followup of the work done by Wolfgang et al. in *Delinquency In a Birth Cohort*, a 10 percent sample of the cohort of 9,945 males born in Philadelphia in 1945 was selected. Arrest records were obtained for this sample and an interview schedule was arranged. Only 567 subjects could be reached for interview, and of that number 50 refused to be interviewed. The basic comparison was between blacks as a group and people whose experience with police was conditioned by their having a criminal record. "The data indicates that the frequency of police contacts with citizens in terms of questioning, chasing and warning does not vary by race but does vary by offender status." Even though official offenders experienced more frequent or harsher contacts with police, they did not evaluate the police as negatively as might have been expected. In other words, there was no significant difference in the negative assessment of police between nonoffenders and official offenders. Despite offender status rather than race being the key determinant of unpleasant contact with police, blacks had a higher negative assessment of police than whites did. ". . . [S]omething other than actual experience may account for blacks' negative assessment of the police." Under the "desert" hypothesis, official offenders may feel that they deserve the treatment the police accord them. Blacks, however, may have a prejudicial attitude toward police "because the police are presumed to be representatives of a white oppressive regime." Blacks thus may feel that they deserve sympathetic law enforcement and therefore apply stringent criteria in evaluating police behavior.

Inasmuch as the data "suggests that offenders accept as just or reasonable the cost of their law-breaking behavior," the study provides some support for the consensus perspective.

CANADIAN JOURNAL OF CRIMINOLOGY

Reviewed by VERNON FOX

"Prostitution in Vancouver: Some Notes on the Genesis of a Social Problem," by J. Lowman (January 1986). A main objective of Canada's

1972 soliciting law was to eliminate or, at least, confine street prostitution. The 1978 Hutt decision, however, determined that a prostitute's behavior when approaching a customer would have to be "pressing and persistent" if it were to be defined as "soliciting." Between 1974 and 1978, approximately 80 percent of prostitution cases involved street soliciting. After 1978, however, very few prostitution charges have involved soliciting. In many cases, charges were traded off for information relating to other areas of criminal investigations, so the prostitute avoided arrest by bartering information. Since the premises and design of criminal law are often impractical for enforcement purposes, police tend to identify with a guiding concept of social order, rather than try to enforce indefinite laws in confusing social situations. The activities of two cabaret clubs in Vancouver were brought to police attention by a report to the British Columbia Police Commission by Monique Layton in 1975, which indicated that they were off-street havens for prostitutes. Controversial undercover police work and bartered information resulted in many arrests of the managers of the cabaret clubs and the closing of one, while the other burned down. The result of closure of the clubs was that the prostitutes simply moved back to the streets undeterred by any soliciting laws. The Fraser Report in 1985 made it clear that the Hutt decision did not have any effect on prostitution in Vancouver. The philosophy of the Fraser Report seems to be more relevant in that legislation must be designed so that it is clear where prostitutes can work. Street prostitution will not disappear wihout somewhere to go.

"Public Deviance: An Experimental Study," by Thomas Gabor, Jody Strean, Gurnam Singh, and David Varis (January 1986). Studies of deviance differ between the clinical approach that is a manifestation of pathology, the conservative or legalistic approach that views it as freely chosen from a range of alternatives, and the sociocultural framework that uses a statistical norm without value judgments. Surveys of official crime data, self-report studies, and observational studies have all consistently revealed a startling high rate of dishonesty. In the present study in Ottawa, 125 convenience stores were visited by three students in their mid-twenties, one a Caucasian male, one female, and one a male of East Indian descent. Each investigator walked into the store and picked up a local newspaper costing 30 cents, left a single dollar bill, and walked out slowly, giving the cashier the opportunity to inform him or her of the ostensible mistake. The change due was not returned in 20 cases or 16 percent, which is a substantially lower rate of dishonesty than has been observed in many experimental studies. While the level of apparent dishonesty was not inordinately high, it was not negligible and may have been greater with a larger inducement. In any case, employment is not a guarantee of socially responsible behavior.

"Delay, Contempt of Court and the Right to Legal Representation," by Judith A. Osborne (January 1986). A body of case law has been emerging from the citations against defense counsel for delays, which inconvenience the court and detract from defense counsel's dual role as both the representative of his client and an officer of the court. Such representation is a component of the more vaguely defined right to a fair trial or due process, rather than representing the client, which may be a matter of the client's choice. There is popular and judicial concern with criminal court delays. When the client is blameless, judges must direct their action toward the defense counsel through contempt of court citations. Most frequently, overloading counsel with legal aid cases prevents adequate time to prepare individual cases. One of the messages being conveyed to defense lawyers is that if they cannot meet their obligations in court, they should refer the case to someone who can. The client is responsible, however, indirectly, for his lawyer's behavior or even for the workload facing the courts. The current situations has the potential for procedural shortcuts, timidity in the conduct of the defense, and the second-rate representation by an unwanted lawyer. Justice delayed may be justice denied but, ultimately, justice rushed may be justice regretted.

"L'évolution de l'emprisonment pénitentiare, de son intensité, de sa fermeté et de sa portée: les cas de Montréal de 1845 à 1913," by Pierre Tremblay (January 1986). There was considerable public debate about the need for penitentiaries before the construction of Canada's first penitentiary at Kingston, Ontario in 1830. In his 1977 study, Baehre traced in detail the development of the penitentiary system in "Upper Canada" from 1835 to 1837, when about 64 percent of inmates were from Montreal. This study examines the development, intensity, severity, and significance of the use of the penitentiary from the standpoint of Montreal from 1845 to 1913. The penitentiary at Kingston was used extensively from its beginning to 1872, when delinquents and some adult offenders were sent to the new provincial penitentiary at St. Vincent de Paul, which was small and not as severe as Kingston. During the period of 1845-1913, severity of prison treatment in Canada was significantly reduced. The rapid industrialization and urbanization of Canada was not accompanied by an increase in imprisonment, nor of its intensity, firmness, or impact on society. In fact, the reverse appeared with lower rates of incarceration and punishment from 1845 to 1913. The operation of the justice system is apparently not entirely determined by social disruption with exploitative capitalism punishing the lower classes. It is apparent that the justice system has a unique capacity of self-regulation, leaving the crime rate, itself, as an independent variable.

THE BRITISH JOURNAL OF CRIMINOLOGY

Reviewed by HARRY W. SCHLOETTER

"Prison Guards and Snitches," by James W. Marquart and Julian B. Roebuck (July 1985). This article examines how the staff in a maximum security recidivist prison within the Texas Department of Corrections utilizes dominant inmates to act as informers. Previous research and popular presentations have generally portrayed "rats" as outcasts and weak prisoners. This study, through participant observation, reveals that the inmate-snitches were not weak, but were the most aggressive and feared inmates. As the authors state, most known "rats" are typical loathed by the staff and prisoners in most institutions. The "rats" in this study were indeed hated, but also envied, feared, and respected. No stigma was attached to their role.

Data were collected at Johnson Unit, not its true name, housing almost 3,200 inmates over the age of 25. Many of these prisoners are hardcore violent offenders. One of the authors entered the institution as a guard, which enabled him to observe and analyze the social control system.

In order to facilitate control and order, staff members enlisted the "official" aid of the inmate elites as informers and surrogate guards. "Building tenders" was the title given to these inmate snitches. As it developed, the system involved four levels of inmates. The top of the hierarchy consisted of the "head" building tenders who were responsible for all inmate behavior in "their" particular block. The second level of the system was the rank and file, who tabulated the daily counts, delivering messages, getting inmates up for work, procuring information, and protecting the officers from attacks by the ordinary inmates. They also socialized new inmates into the system, broke up fights, and unofficially disciplined erring inmates. The third level consisted of inmate runners or strikers. These performed the janitorial work of the block and served as back-ups in breaking up fights and quelling minor disturbances. The fourth level were the turnkeys, who shut and locked doors during fights or disturbances. They also passed along information about anything they heard.

The article goes into interesting detail as to the daily operation of the snitch system and its effectiveness. These snitches worked for and openly cooperated with the staff. For the most part these men were the most aggressive, older, and criminally sophisticated prisoners and were not deviants or outcasts. In conclusion, the authors state that "from the standpoint of progressive penologists and reform-minded citizens this entire system would be considered deviant, inhumane and morally corrupt." We do know, however, that in other prisons, staff have coopted inmates to help maintain social order. In this setting, it is more formally recognized.

"Reparation and Justice for Juveniles," by Harry Blagg (July 1985). This article describes a program which diverts juvenile offenders whenever possible from the penal and welfare systems. It incorporated several features which set it apart from earlier models. In the first place, it was intended to influence the practice of five agencies involved with young people, namely, probation, the police, the youth services, education, and the social services. The concept of reparation was to be used selectively and only after a number of criteria were met.

The criteria were:

1. Was the offense admitted?
2. Was the offender willing to participate?
3. Was it an offense that could be resolved?
4. Was the proposed form of reparation appropriate?
5. Did the victim agree and feel comfortable with the proposals?

This study took place between November 1981 and November 1982. The juvenile Liaison Bureau had 492 referrals, 77 of whom took part in some kind of offense resolution. Some made direct reparation to the victim, others apologized, and still others became involved in community work.

Appropriate examples of interviews with selected offenders are included. These give a flavor for the types of problems and ultimate resolutions agreed upon. The author feels that reparation has come to play an important role in diversionary strategies. The author concludes that if reparation is used in the right context and with careful preparation, it can be a meaningful experience for juvenile offenders.

ARTICLES OF SPECIAL INTEREST IN LEGAL JOURNALS

Reviewed by CANDACE MCCOY

DRUNK DRIVING: CAREFUL THOUGHTS ABOUT SENTENCING

Though it is unlikely that Americans will ever again enact the ill-fated laws (and constitutional amendment) that in the 1930's prohibited distilling or drinking alcohol, any observer of the current social scene can trace a gradual but definite anti-drinking attitude growing over the past few years. While complete prohibition was once thought to be appropriate, now the social watchword is moderation.

The "New Moderation" springs, no doubt, from renewed interest in physical fitness and careful reconsideration of the psychological damage drinking can inflict both on regular tipplers and on their families. The trend has also been influenced by reformers who forcefully lament the carnage caused by drunk driving. Groups such as Mothers Against Drunk Driving (MADD) have, over the past decade, encouraged state legislatures to increase penalties drastically both for drunk driving and for injury caused by any resultant accidents. Most states have responded with new statutes which increase the penalties for drunk driving.

These statutes have been on the books long enough to have become the subjects of legal scrutiny; often, they also raise difficult issues of corrections policy. The obvious problem for corrections personnel has been how to shoehorn offenders sentenced under mandatory jail-time statutes into overcrowded facilities. Many statutes also require that convicted drunk drivers attend classes on the ill effects of alcohol, yet seldom is money simultaneously appropriated for these programs as the harsher penalties are set into law.

Stiffer sentencing also means that the crime of drunk driving will be taken more seriously in court. Defendants who formerly pled guilty quickly and accepted a small fine or a weekend in jail are less likely to accept their fate quietly when the sentence could be a year in jail and/or substantial monetary penalties. Defendants are more likely to demand careful attention in court, including the use of various legal challenges to the new statutes.

Although impact studies of the new drunk driving laws are scarce—most of the legislation is so new that it would be poor methodology to assess its effects when courts have barely had time to set new machinery into motion—a few studies of some of the earlier statutes are beginning to be reported. One thorough study of California's 1982 Driving Under the Influence law, which significantly increased the penalties for driving with a blood alcohol level exceeding .10, has concluded that the law caused lower criminal courts to become inundated with drunk driving cases. The average time spent processing drunk driving cases doubled from 48 to 86 days, and three-fourths of the defendants hire attorneys, compared to half before 1982. Jail sentences have indeed become longer, but most defendants serve their terms in "weekend work."[1]

Another interesting finding of this study involved recidivism. More than half the drivers charged with drunk driving had been arrested for the offense at least once before. Under the new law, prior convictions can be used to increase substantially the punishment for the current offense. Yet only about half the defendants eligible for the sentencing enhancement actually had the prior conviction used against them in the new case.

There could be several reasons that the system ignores these prior convictions, even though under the new law they could be used to increase the punishment for drunk driving. District attorneys can "charge the priors" or not, in their discretion, and they may reserve the harsher treatment for those defendants whose blood alcohol readings are particularly elevated. Moreover, considering the strain heavy jail sentences place on local incarceration facilities, justice professionals are subtly encouraged to ignore prior convictions so as not to substantially increase the amount of time an offender must spend in jail. Finally, court personnel may refrain from charging priors because the device is still legally problematic.

A recent law review casenote highlights this problem.[2] Arkansas passed an "Omnibus Driving While Intoxicated Act," similar to California's, in which drunk driving is a misdemeanor punishable by 1 day to 1 year in jail and a fine of $150 to $1,000. If this is the defendant's second offense, the penalty increases to 7 days to 1 year in jail and a fine from $400 to $3,000. Prior to passage of this new law, drunk driving had been a traffic offense which most defendants did not challenge in court; most simply paid a ticket with a hefty fine. Higher penalties, however, render the offense subject to the legal protections of ***Argersinger*** v. ***Hamlin***, 407 U.S. 25 (1972), which held that counsel must be provided for indigent defendants charged with crimes punishable by a jail term. Most defendants, indigent or not, are more likely to challenge a drunk driving charge in court when the punishment is heavy.

If this is a second offense, may the court impose additional punishment for recidivism, where the first conviction was obtained as the result of an uncounseled guilty plea? The Arkansas court said no. Prosecutors in many states, perhaps realizing that these new statutes need a "breaking-in" period, are simply reluctant to charge defendants with prior convictions obtained under the old laws. As courts handle more cases under the new statutes, these glitches may slowly dissipate.

A much more serious problem arises when the drunk driver causes an accident. Of course, a conviction and heavy penalty under the "driving while intoxicated" statute is appropriate, and, if other drivers, passengers, or bystanders are injured, other criminal charges may be brought as well. (They can include crimes ranging from reckless driving to vehicular manslaughter.) An interesting legal problem arises when a defendant is convicted of drunk driving and/or related crimes, pays restitution to victims as part of the criminal sentence, and then is sued for damages in civil court.

Should criminal prosecution be a defense to a civil claim for punitive damages? The majority of state courts say no, but this stance was developed before the current popularity of restitution as a criminal penalty. If, as part of the criminal sentence, an offender pays his victim for damage inflicted, it seems to be double-dipping to allow the victim to obtain damages again in civil court. Most civil courts handle this problem by holding that restitution is comparable to compensatory damages and that a victim can be compensated only once. However, punitive damages in civil court are a well recognized remedy, also. If a victim can prove some aggravated circumstance entitling him to compensation in excess of actual damages suffered, punitive damages will be awarded. Several states have permitted recovery of punitive damages under the theory that drunk driving is such reckless, wanton behavior that it constitutes such an aggravated circumstance.

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[1] This "DUI Adjudication Evaluation Project" was conducted in Alameda County by the Office of Court Services. Winifred Hepperle is director, and Dorie Klein is project director. An executive summary of the report can be obtained by writing to the Office of Court Services, 600 Washington Street, Oakland, CA 94607.

[2] *Use of Prior Uncounseled Convictions to Enhance Penalties for Subsequent Offenses under the Omnibus DWI Act*, 38 ARK.L.REV. 688 (1985), student author Ralph W. Waddell. Casenote on *State* v. *Brown*, 283 Ark. 304 (1985).

This structure of punitive damages was thoroughly analyzed by Professor Morris in a series of influential articles from the 1930's.[3] Two other recent law review articles examine the problem specifically in regards to drunk driving.[4] Many state courts will likely confront the issue in the future.

Finally, in a recent law review article, Chief Justice Warren Burger places problems of criminal incarceration in perspective. Although drunk driving is a serious offense, for example, justice professionals hesitate to sentence drunks and other offenders to lengthy terms of incarceration if jail and prison facilities are not capable of holding them. This is an especially serious consideration, of course, in prisons, but it is also a problem in local jails where work-release and rehabilitative programs mandated by statute are unfortunately almost nonexistent.

Chief Justice Burger has become the nation's leading advocate of prison reform through work programs. In a speech printed in a recent issue of the *Arkansas Law Review*,[5] he notes that "we are at the present time, in this country as a whole, engaged in a prison building boom . . . [which will cost] about $10 to $12 billion of construction over the next eight or ten years." Yet, he says, these warehouses for criminals will continue to be inadequate for holding the offender population. The solution is not to rely on cages, but instead "to convert them into, I hope, schools and production plants with fences around them."

Chief Justice Burger believes work programs are as likely to achieve correctional goals as are purely incapacitative alternatives. He says prisoners must work, that salaries should be paid to them (from which room and board and a stipend for the prisoner's family will be deducted), and that this program will not only train prisoners in marketable skills, but help alleviate some of the problems caused by idleness in prison.

These ideas are not new—the Chief Justice carefully notes parallels to Scandinavian systems and also shows how any new work system must differ from forced labor policies of the past—but they deserve reexamination in light of the current crisis in correctional alternatives.

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[3] Morris, *Punitive Damages in Tort Cases*, 44 HARV.L.REV. 1173 (1931).

[4] Carl W. Chamberlin, *Punitive Damages in California: The Drunken Driver*, 36 HASTINGS, L. J. 793 (1985); *Punitive Damages for Crime Victims: New Possibilities for Recovery in Indiana*, 18 IND.L.REV. 655 (1985).

[5] Warren E. Burger, *The Need for Change in Prisons and the Correctional System*, 38 ARK.L.REV. 711 (1985).

Your Bookshelf on Review

EDITED BY J. E. BAKER

Federal and State Corrections Administrator, Retired

The Impact of the Determinate Sentence

Determinate Sentencing and Improvement: A Failure of Reform. By Lynn Goodstein and John Hepburn. Cincinnati, Ohio: Anderson Publishing Co., 1985. Pp. 244.

By the title of this book, one might erroneously conclude that the earliest determinate sentencing reforms, i.e., those in Minnesota, Illinois, and Connecticut have failed. But this is not the case. The conclusions drawn by the authors from their research is that determinate sentencing increases predictability and decreases inequity in sentencing outcomes.

The majority of the book outlines the history and implementation of sentencing reforms in the three states. The last three chapters evaluate the impact of these reforms. As indicated, the research findings supported the hypothesis: determinate sentencing increases predictability and decreases inequity. Three independent variables, the prison studied, time of observation, and type of sentence, had a significant main effect on both predictability and inequity, but type of sentence accounted for most of the variance. Yet, the small amount of variance and predictability and inequity explained by sentence type suggests that the sentencing reform has only a small effect on prisoners' perceptions of predictability and inequity.

The research findings also demonstrated that there is no systematic support for the general hypothesis that determinate sentencing has an impact on prisoner attitudes and behaviors. But, as the authors conclude, the latter findings do not necessitate that determinate sentencing reforms have failed. By fixing sentences and providing prisoners with a fixed release date, prisoners and correctional staff alike will be able to better plan for the future. Moreover, the public is not lulled into a false sense of security that a prisoner got a 10-year sentence—only to be paroled after serving a few years!

This book is useful as a historical guide to problems and pitfalls of sentencing reforms and their implementation. It also offers evidence of a realistic view that determinate sentencing will not cure all ills in the criminal justice system. But, on the other hand, it provides evidence that disparity in sentencing is lessened by determinate sentencing. Finally, the authors offer correctional managers sound reasons why it is a good practice to provide inmates with their release dates and how they can better manage their institutions by knowing the release dates of the inmates.

Washington, D.C. SUSAN KRUP GRUNIN

A Look at Social Work's Role

Social Work in Juvenile and Criminal Justice Settings. Edited by Albert R. Roberts. Springfield, Illinois: Charles C. Thomas Publisher, 1983. Pp. 378. $29.75.

The groundbreaking work of pioneering justice social workers has opened the door to a new frontier; professional social workers today are practicing their skills in police departments, family courts, prisons, and probation offices. This book chronicles the beginnings of an interdisciplinary cooperation between practitioners in criminal justice and those in social work, between the agents of social control and those of social work. It is a rare discovery in social work and corrections literature. Formerly an educator in criminal justice studies and currently a social worker, I felt a great surge of excitement as I turned the pages of Roberts' unusual text. Never have I seen a major work that so skillfully combines the skills and ideologies of social work with the harsh realities of the criminal justice field. In fact, as Vernon Fox indicates in the foreword, this is the first book of major importance to do so.

Offering a comprehensive overview of social work policies and practices in juvenile and criminal justice settings, this text is composed of original selections with several reprints from *Federal Probation.* A strong introductory chapter by Treger provides the overview; the field of social work is summoned to a new challenge—to reconceptualize the evolving field of practice from corrections to "social work in the justice system." The need for appropriate curriculum development that will train students for direct practice in the justice system is underlined. All the articles in the first section, "Policy Issues" are informative and well written.

Section II is entitled, "The Role of Police Social Workers." The chapters here depict a seemingly extraordinary alliance between police officers and social workers, an alliance that actually goes back to the early 1900's when the first police social workers were also the first women police officers.

Section III covers one of the most overlooked areas of justice social work—victim assistance work. This area provides fertile ground indeed for future development by the social work profession. The second chapter on special problems of deaf persons did not seem especially relevant at this point, however.

The fourth section examines the role of social workers in the context of the juvenile justice system. Social work intervention is described in behalf of troubled children and youth in the juvenile court, probation and community-based homes. The discussion of status tensions between social workers and lawyers in Needleman's chapter is especially worthwhile.

Probation, parole, and court settings are the topics for the next presentation. Subjects of interest in this segment of the book are the relevance of social work administrative training for probation and parole administration and roles for the probation officer as social worker. The chapter on ethics is thought-provoking in its implications. There is little attention paid to the court setting, however. I would have liked to have seen a chapter on the social worker and the adversary system itself.

Section VI, "Correctional Social Work," looks at the often grim area of prison social work. Confidentiality, the maximum security penitentiary, use of volunteer programs, and services to prisoner families—these are among the topics aptly dealt with in this portion of the book.

The final section, "Special Issues and Offender Groups," addresses some further controversial areas not treated elsewhere. The social work role is examined in assessing dangerousness of offenders, providing services to women offenders, attending to problems of alcoholism and other drug addictions, and resolving conflict in a racially tense situation. The chapter on race relations in prison is especially well researched and forceful; the one on substance abuse speaks at a purely superficial level for such a compelling topic.

Viewed as a whole, *Social Work in Juvenile and Criminal Justice Settings* is a magnificent effort to integrate the social work and criminal justice arenas. This book is ideally suited for use as a textbook in both social work and criminal justice courses. Also, it is an excellent resource for practitioners and educators in both fields.

Longview, Washington KATHERINE VAN WORMER

Resistance: Active or Passive?

Stopping Rape: Successive Survival Strategies. By Pauline B. Bart and Patricia H. O'Brien. New York: Pergamon Press, 1985. Pp. 201. $10.95.

This volume is written to provide data to answer the question, "What do I do if someone tries to rape me?" It focuses on "survival strategies" which have proven effective in avoiding rape, as well as the background and situational variables that differentiate raped women (N = 43) from rape avoiders (N = 51). The authors interviewed 94 women who were confronted by rapists. The 94 women were recruited through newspaper ads, press releases, friendship networks, brochures, and public service announcements in the Chicago area. The interviews of the subjects were taped and transcribed, and about 250 pieces of information were coded from the transcripts. The interviews lasted from 1½ to 6 hours (a sample transcribed interview is presented in the appendix along with 13 variables on all 94 cases). The authors rejected a "data crunching" approach in favor of a more qualitative analysis so that the book would have an appeal beyond the academic community.

The book is comprised of eight chapters. Chapter One describes the methodology and sample and reviews the literature on the effectiveness of alternative survival strategies for a woman confronted by a rapist(s). The authors assert that most police departments advise women to use passive resistance (talking) instead of active resistance (screaming, fighting) as recommended by Storaska in a book (1975) and a widely used film. The traditional wisdom has been that fighting the rapist will not be effective in preventing the rape and will only excite him, make him angrier, and result in a greater likelihood of serious injury. However, several recent studies are described which found that active resistance was more effective than passive resistance.

Chapter Two concerns the definition of the 94 subjects as to whether they had been raped or avoided rape. Almost half (23 of 51) of the women who said they avoided "rape" were forced into nonphallic sex. Chapter Three examined the demographics of the rape situation by comparing rape victims with rape avoiders on such variables as race of the assailant, time of the attack, location, presence of a weapon, etc. The authors found that women whose primary concern was avoiding murder and/or mutilation were more likely to be raped while those who were concerned primarily with avoiding rape were less likely to be raped.

Chapter Four examines the relative effectiveness of various rape prevention strategies. The more active strategies (e.g., screaming, fighting, fleeing) were more effective than the more passive strategies (e.g., talking, pleading) and multiple strategies were even more effective than a single strategy. An additional advantage of an active strategy was that it reduced depression and other psychological problems that followed completed rapes (i.e., "I did all I could"). No support was found (in this study or in the literature) for the "myth" that physical resistance increases the chances of severe injury and death.

Chapter Five examines the different socialization patterns for rape victims and avoiders. Bart and O'Brien concluded that learning to be feminine, a theme of female socialization, resulted in an increased vulnerability to rape victimization. For example, rape victims were less likely than rape avoiders to have been encouraged by parents to fight back when quarrels or fights occurred in childhood, to have engaged in sports, to have been encouraged to handle emergencies independently, and to have expressed anger openly. Chapter Six discussed the extent to which Jewish, white Catholic, and black women were more or less vulnerable to rape. Jewish women were less likely to be avoiders since they were socialized to never fight back, while black women were more likely to be avoiders since they were more likely to fight back.

Chapter Seven ("Why Men Rape") explained why the more active strategies were more effective in light of the motives of the rapist. The authors argue that most rapists (even most "normal" men) believe that women provoke and/or enjoy rape and that their passive resistance is "just playing hard to get." Thus active resistance is necessary to convince these men that the woman does not in fact want to have intercourse. They reject the view that rapists are psychological deviates who are driven by anger and sexual impulses. The final chapter presents a summary and conclusion. The authors suggest that the dissemination of "avoidance myths" (advice that women should talk and not fight) is a mechanism of social control, keeping women down and dependent. This suggestion fits in with their feminist thesis that rapists are the "shock troops of male supremacy." They suggest that women should not "negotiate" with the rapist as this strategy is as counterproductive as the attempt of the Jews to negotiate with the Nazis.

At times it appears that the feminist ideology of the authors interfered with objective analysis of their data. The book began with the claim that traditional advice to women to resist passively was incorrect in that active resistance would actually improve one's chances of avoiding rape and would not increase the chances of being severely injured if a rape did occur. While their data did confirm the greater effectiveness of physical resistance in avoiding rape, the data presented do not clearly address the effectiveness of physical resistance vs. passive resistance in avoiding injury once a rape does occur. At one point (p. 42) the authors admit that fighting back "somewhat increases her chance of rough treatment" (while increasing her chances of rape avoidance) and yet at other points (pp. 40, 41, 113) they assert that the risk of greater injury if the women fights is a myth (p. 113).

It would appear that the consequences of physical resistance involve a type of tradeoff (i.e., a greater chance of avoiding rape but also a greater chance of injury), and yet the authors are reluctant to admit this in their desire to validate the feminist admonition to physically resist. Furthermore, their sample does not include those women who were killed during a rape (who may have physically resisted) and likely underrepresents victims who were severely injured and thus less likely to volunteer to talk with researchers about their traumatic experience. Storaska has been criticized for advising women to talk and not fight, based on interviews, since those who did talk and were raped (or killed) were not likely to volunteer to talk with him. The sample of Bart and O'Brien might suffer from a bias the reverse of that utilized by Storaska.

The authors' ideology also influenced their discussion of the race issue. They are apologetic in their presentation of black on black rape and suggest that many feminists believe it is racist to report black rapists to the racist police. They even had a black female psychiatrist (p. 88) review that section of their book to see if it (the discussion of black on black rape) was racist. And yet the authors completely ignore the problem of black on white rape. Though no figures are given directly on interracial (black on white) rape it appears that more than 50 percent of the white women were raped by blacks. Perhaps the authors do not consider this fact significant or were reluctant to discuss it since that discussion might be termed racist. It is difficult to see why the failure to discuss black on white rape is not racism.

Miami Florida WILLIAM WILBANKS

A Proposed Scientific Medical Model

Attacks on the Insanity Defense: Biological Psychiatry and New Perspectives on Criminal Behavior. **By C. R. Jeffery, in collaboration with Rolando V. del Carmen and James D. White. Springfield, Illinois: Charles C. Thomas, 1985. Pp. 238, $29.75.**

This book has nine chapters with five written solely by Jeffery, three by Jeffery and White, and one by del Carmen. The book title is misleading, as little in the book deals directly with the insanity defense. The subtitle—"Biological Psychiatry and New Perspectives on Criminal Behavior"—would have been a more suitable title, as most of the chapters focus on biological/neurological causes of criminal behavior. The chapter by del Carmen—"Civil Liabilities of Government Psychotherapists and Agencies for Release of the Mentally Ill"—is not related to the biological causation thesis.

Jeffery (and White) contends that "legal criminology" is based on a mind/matter dualism wherein mental states (mens rea) cause physical (criminal) behavior. Thus, philosophical ideas of hundreds of years ago govern crime control policy rather than science as it exists in 1984. At one point he suggests that the model of legal criminology is akin to witchcraft and exorcism (p. 152). He advocates a "scientific medical model" which applies modern theories of psychology and psychiatry to human/criminal behavior. The book critiques legal criminology in Chapter One and describes the scientific medical model in Chapter Two. Chapter Three discusses the current controversy over the insanity defense and suggests that the debate fails to challenge the (incorrect) mind/body dualism assumption. Jeffery does not believe that any state of mind (including mental illness) causes criminal behavior.

The major thesis of the book (biological causation of crime) is spelled out in Chapter Four ("Law, Biological Psychiatry and Diseases of the Brain"). Jeffery takes a deterministic view of criminal behavior and sees the pleasure and pain centers of the brain (the limbic system or the "emotional brain") competing with the "rational brain" (the cortex) for the control of motor activities such as criminal behavior. Any impairment of the brain or any learning that takes place on the basis of pleasure and pain can result in criminal behavior. Lawyers and traditional criminologists see criminal behavior as the result of cognitive defects/dysfunctions, whereas Jeffery rejects this "mentalistic" view and suggests that criminal behavior is (usually?) caused by a defect in either the limbic or cortex areas of the brain. "A man with a testosterone imbalance, or a female with the premenstrual syndrome, or a person with hypoglycemia or sensitivity to alcohol or other biochemical products, does not have control of the behavior which they exhibit, even though they have an ability to be rational" (p. 82).

Jeffery does not dismiss the importance of learning but suggests that there are biological correlates of learning so that learning involves changes in the neurological and biochemical structure of the brain. Violent behavior results when the limbic system controls and the response is emotional and violent; theft may occur when the cortex controls and the response is rational but based on (antisocial) values and norms. Since there are biological/neurological correlates of learning, the criminal (defective) brain can be identified via neurological examinations. Jeffery identifies several brain disorders which can be identified such as episodic cerebral dysfunction, premenstrual syndrome, hypoglycemia, post-trauma stress disorder, psychopathy, and XYY syndrome.

Jeffery would make radical changes in the way society responds to criminal behavior. Psychiatrists would not be asked to talk about abnormal conditions of the mind but about abnormal conditions of the brain or neurological system and the extent to which the physical impairment of the defendant's brain interfered with his or her rational and emotional processes. He suggests that if the defendant has a brain dysfunction, that condition could be photographed and shown to the judge and jury just as is currently done when a lawyer claims that his client has a broken back or a damaged liver. "The definition of mental illness would change from 'insanity' or 'mental disease and defect' to 'a physical condition of the brain demonstrated by physical evidence which ties the behavior in question to neurological and biochemical processes within the brain and nervous system.' The insanity defense would be abolished and in its place we would have medical definitions of diseases of the brain" (p. 107).

Jeffery advocates that all hardcore inmates in the prison system be given thorough medical/neurological examinations to determine if there is a biological base to their behavior. He estimates (p. 180) that 50 percent of inmates have neurological defects. He mentions several celebrated cases (e.g., Charles Whitman, Jeffery MacDonald, Theodore Bundy) where the state should have conducted CAT scans, blood analysis, and hair analysis (p. 116).

Jeffery maintains that we do not need three different types of institutions for behavioral and medical problems (e.g., hospitals for the physically and mentally ill and prisons for criminals) since "it is not possible to differentiate the physically ill from the mentally ill criminal" (p. 152). He suggests that all three problems can be treated by diet, drug therapy, and neurosurgery (p. 153). It appears that the treatment he envisions would not take place in any place similar to a prison, since he maintains that we should abolish prison and punishment (p. 229). He points out that we do not punish people for heart attacks or cancer, but we treat and cure them, and thus we should treat criminals in a similar fashion (p. 152).

Chapter Seven suggests that defendants/inmates should not only have a right to treatment (e.g., CAT scans, hair analysis, etc.), but they should not have the right to refuse treatment. "We cannot allow a criminal to refuse treatment when he does not have a right to refuse punishment. If the political state has the power to punishment, it must then have the right to treat" (p. 192). To those who object to such techniques as neurosurgery he would reply that "more brain tissue is destroyed by the prison environment than by all the neurosurgeons" (p. 192).

Jeffery would extend his causation and treatment models to the prevention of crime. Neurological treatment is justified when a prediction (based on neurological exams) indicates that violent behavior is likely to occur in the future. Though he recognizes the error rates of prediction efforts, he suggests that predictions based on biological measurements are far superior to those currently made (with psychological and sociological measurements).

The Jeffery thesis and proposals as presented in this book are deficient in several respects. *First,* he fails to provide documentation for his contention that approximately 50 percent of inmates have neurological defects or that those defects, when they do exist, are the cause of crime (e.g., the defects could be simply coincidental and not causative, or the defects could have developed *after* the crimes).

Second, there is no documentation presented as to the reliability and validity of neurological exams to detect brain disorders (assuming such disorders do cause crime) or for the contention that such alleged defects can be successfully treated by diet, drugs, and neurosurgery. There would likely be as much disagreement on the alleged existence of a neurological defect as there is currently on the existence of mental illness. Certainly there is no evidence presented on the rehabilitative efficiency of diet, drugs, and neurosurgery.

Third, his suggested role for psychiatrists would appear to be as problematic as their current role in that they would be asked to testify as to whether neurological defects "interfered" with the rational and emotional processes of the brain. How would they make that determination? Such a judgment would be as speculative as the current opinions as to whether the defendant knew right from wrong or was under control at the time he committed the criminal act.

Fourth, the suggestion that the state could impose some type of drug treatment or neurosurgery on convicted inmates is disturbing, given the lack of proof for the effectiveness of such treatment. Due process and concern for the rights of the individual would be abandoned to some type of Walden Two state which would have no respect for individual rights, since the concept of free will is rejected. It is fortunate that Jeffery's proposals are not politically feasible. The book makes for interesting reading, but it falls far short of a *scientific* model of criminal behavior in view of the lack of documentation for the thesis and proposals.

Miami, Florida WILLIAM WILBANKS

A Complete Introduction*

Introduction to Corrections. By Richard W. Snarr and Bruce I. Wolford. Dubuque, Iowa: W. C. Brown Publishers, 1985. Pp. 518.

As the title suggests, this book serves as an introduction to the field of corrections in the United States. The authors, both professors at Eastern Kentucky University, have written an introductory text keeping in mind throughout the student who has little or no experience or exposure to the criminal justice system or corrections as a subsystem. In that context, the authors succeeded admirably.

Very often, one introductory text in corrections differs little from another. Academicians often choose these texts based on graphics, tables, charts, glossary, and the chronology of presented materials. But this text has all of these things, plus it is an excellent text with added dimensions.

The material presented is given to the students in a systems approach style. This approach carries the student from a rationale for corrections to the final chapter on careers in corrections. There are many stops in between. The traditional chapters dealing with probation, parole, jails, community-based treatment programs, prisons, and others are well covered. The student is led through the systems from the entry position and beyond. The authors provide systemic linkages which give a rationale for the flow of materials, and the information is presented in an interesting and educational manner.

Two aspects of this book are truly unique. First of all, there is a chapter, obviously located at the end of the book, which centers around the opportunities and careers in corrections. This chapter discusses qualifications, the projected demand for professional correctional personnel, correctional organizations and publications, and volunteers in corrections. Secondly, a chapter is devoted to the forgotten person in criminal justice, the victim. In most introductory texts, the victim is

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*Editor's Note: Occasionally, *Federal Probation* will present reviews of the same book by practitioners in the subject area, or by an academician and a practitioner, or by academicians of differing specialties in criminal justice. The principal purpose is to provide *Federal Probation* readers the benefit of the varying emphases of the reviews.

seldom given a thought. This is not the case in this book. Current topics such as victim compensation, victim assistance, and organizations of victims groups are discussed.

From a pedagogical point of view, the instructor will be pleased to see that each chapter has a section for key terms, summary, review questions, and additional readings.

In conclusion, on the market today are many introductory texts for educating students in the field of corrections. This text is one of the best because of its readability, organization, and systems orientation.

Louisville, Kentucky RONALD M. HOLMES

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Snarr and Wolford have put together an outstanding textbook for beginning criminal justice students. The book is easy reading, and the idea of a list of key words at the beginning of each chapter is excellent for developing and understanding correctional jargon.

The book covers all parts of the criminal justice system in a method that allows the student to get a clear understanding of how each relates to the other. The information is presented chronologically, from arrest to incarceration to parole. This provides a logical sequence for beginning students, in their attempt to grasp the full picture of how the system should operate.

The text begins by giving the reader a "working" definition of corrections, identifying the four key elements: punishment, protection of society, change in offender behavior, and compensation for victims. Through the use of charts, pictures, and graphs, each chapter provides in full detail a thorough knowledge of each segment of the criminal justice system.

The summary, review questions, and list of additional readings at the end of each chapter certainly give the student an excellent tool for learning. This is so well done that the student should find learning relatively easy.

Another advantage of the book is that the appendices contain information that the student can use regarding employment, professional organizations, and various professional publications.

In my opinion, this book should be one of the leading texts used by students with criminal justice majors.

Washington, D.C. G. H. WASHINGTON

Reports Received

Corrections and Privatization: An Overview. The Prison Journal, 311 S. Juniper Street, Philadelphia, Pennsylvania 19107, Autumn-Winter 1985. Pp. 124. The 10 articles in this issue provide a look at the privatization of corrections at this early stage of its development.

Crime and Punishment in Arkansas: Adventures in Wonderland. The Murton Foundation for Criminal Justice, Inc. (Tom Murton), Stillwater, Oklahoma, 1985. Pp. 41. The purpose of this publication is to shed a bit more light from a different view on the case of an inmate convicted of killing a North Little Rock, Arkansas policeman on April 16, 1963.

Equal Access to the Courts for Linguistic Minorities. Final Report. New Jersey Supreme Court Task Force on Interpreter and Translation Services, May 22, 1985. Pp. 307. On the basis of relevant reports, learned papers, and case law and statutes in each state and the Federal system, together with surveys, interviews, and field visits throughout New Jersey, a proposed judicial administrative code section was prepared governing the qualifications and conduct of translators and interpreters in court and court-related proceedings.

First Joint International Conference on Research in Crime Prevention. United Nations Social Defense Research Institute (Publication No. 26), Rome, Italy, June 1985. The conference was hosted by the Arab Security Studies and Training Center.

Information Bulletin on Legal Activities. Directorate of Legal Affairs, Council of Europe, July 1985. Pp. 52.

Juvenile Social Maladjustment and Human Rights in the Context of Urban Development. United Nations Social Defense Research Institute. (Publication No. 22), Rome, Italy, October 1984. Pp. 503.

Potential Liabilities of Probation and Parole Officers (revised edition). National Institute of Corrections, U.S. Department of Justice, August 1985. Pp. 202. This is an update (as of August 1, 1985) of the manual published in March 1982.

Books Received

Alternatives to Criminal Courts: The Potential for Non-Judicial Dispute Settlement. By Tony F. Marshall. Brookfield, Vermont: Gower Publishing Company, 1985. Pp. 310. $33.95.

Corrections in America: An Introduction (4th edition). By Harry E. Allen and Clifford E. Simonsen. New York: Macmillan Publishing Company, 1986. Pp. 522.

Crime and Reconciliation: Creative Options for Victims and Offenders. By Mark Umbreit. Nashville, Tennessee: Abingdon Press, 1985. Pp. 141. $7.95.

Juvenile Delinquency (2nd edition). By Peter C. Kratcoski and Lucille Dunn Kratcoski. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1986. Pp. 389.

Prisons and Prisoners: Historical Documents. Edited by Sol Chaneles. New York: The Haworth Press, Inc., 1985. Pp. 218. $22.95 (hard); $14.95 (soft).

Prisoners and the Law. Edited by Ira P. Robbins. New York: Clark Boardman Company, Ltd., 1985. $75.

Prisoner Participation in Prison Power. By J. E. Baker. Metuchen, New Jersey: Scarecrow Press, Inc., 1985. Pp. 430. $29.50.

The Substance Abuse Problems, Volume 2, *New Issues for the 1980s.* By Sidney Cohen. New York: The Haworth Press, Inc., 1985. Pp. 323. $34.95 (hard); $19.95 (soft).

It Has Come to Our Attention

The PACT Institute of Justice recently completed a study evaluating the victim-offender reconciliation program (VORP) in selected sites in Indiana and Ohio. Through this program, the crime victim—in the presence of a trained mediator—meets face-to-face with the offender to discuss the offense and negotiate a restitution agreement. The PACT study focused on such questions as who participated in the process and why; how the process worked; how did the participants evaluate the program; what were the outcomes of the process; and how does VORP function as an alternative to incarceration. For further information, or to obtain a copy of the study, contact John Gehm, PACT Institute of Justice, 106 N. Franklin, Valparaiso, Indiana 46383; telephone: (219) 464-1400.

The Correctional/Special Education Training (C/SET) Project.—as the result of a recent survey—has concluded that post-secondary criminal justice programs and special education programs seldom work together to address the needs of handicapped offenders. The lack of interdisciplinary training effort was attributed, among other things, to the restrictiveness of current degree programs and limited faculty expertise and resources. To address this situation, C/SET Project staff have developed curriculum modules to aid educators. For additional information, write to Arizona State University, College of Education, Department of Special Education, C/SET Project, Tempe, Arizona 85287.

Cabinet Secretary George W. Wilson has termed the **Kentucky Corrections Cabinet's** new intensive supervision program an "astounding success." The year-old program saw only 3 out of its 400 participants returned to prison because of a new felony conviction. Eighty-six percent of the participants were either employed or in school, and 83 percent were either still active in the program or had completed it and were transferred to regular supervision.

The International Union for Child Welfare, beset with financial problems, will be dissolved. Therefore, publication of the ***International Child Welfare Review*** will cease. For further information, contact Francis Gruber, Secretary General, International Union for Child Welfare, International Centre, rue de Varembe 1, P.O. Box 41, CH-1211, Geneva 20, Switzerland.

The American Correctional Association (ACA) has recently published two directories: ***Probation and Parole Directory*** and ***1986 ACA Directory of Juvenile and Adult Correctional Departments, Institutions, Agencies, and Paroling Authorities.*** Both publications list names, addresses, and telephone numbers of key personnel and offer statistical information and other pertinent data. The directories are available at a cost of $28 a piece for ACA members, $35 a piece for nonmembers. Make checks payable to and send to: American Correctional Association, 4321 Hartwick Road, Suite L-208, College Park, Maryland 20740.

The National Institute of Justice/NCJRS has published *Criminal Justice Information Package—Burglary Statistics*. Designed to be an inexpensive, timesaving resource, the package includes information on two major sources of burglary statistics, two issues of the *Bureau of Justice Statistics Bulletin* which deal with burglary, a list of printed sources for further research, and a list of contacts, and referrals. To order the package, send $10 check or money order to: NCJRS, Department F-AAP, Box 6000, Rockville, Maryland 20850.

Contact Center, Inc. has published a booklet on inmate lawsuits. The booklet reports information gathered as the result of a recent 2-year survey of state prison systems and the Federal Bureau of Prisons. The survey revealed that inmates win monetary damages or settlements in only a miniscule number of the lawsuits they file against state and Federal correctional systems. The booklet includes information on all reported damages paid to inmates in suits lost or settled, as well as total dollars paid, by system, during the 2 years for lost lawsuits, settlements, and attorney fees. The booklet is available at a cost of $15; write to: Contact Center, P.O. Box 81826, Lincoln, Nebraska 68501.

The Department of Psychiatry, Albert Einstein College of Medicine will hold its seventh annual Cape Cod Institute from June 23 through September 5, 1986. Featured will be 21 week-long courses on topics ranging from aging to mental health policy to self psychology. In celebration of 1986 as the "Year of the Child," the first 6 weeks will include a series of six programs on appropriate themes. Tuition is $355 for one program, $260 for each additional one. Student rates are available. For a catalogue and other information, write to: Cape Cod Institute, Albert Einstein College of Medicine, 1312 Belfer Building, Bronx, New York 10461, or call (212) 430-2307.

The Third Annual Correctional Symposium: Casework and Custody in Cooperation will be held October 28-30, 1986, in Lexington, Kentucky. The conference—geared to correctional caseworkers, administrators, and other interested practitioners and researchers—will focus on effective and innovative programs to develop cooperative efforts between casework and custody. Topics featured will include correctional architecture and design, contagious diseases, and terrorism and disruptive groups. A call for papers and presentations has been issued. For further information, contact: Training Resource Center Project, Eastern Kentucky University, 202 Perkins Building, Richmond, Kentucky 40475-0951; (606) 622-1497.

The North American Association of Wardens and Superintendents will hold its first annual conference October 28-30, 1986, in Lexington, Kentucky. This conference—which is being held in conjunction with the Third Annual Correctional Symposium: Casework and Custody in Cooperation—is designed to provide correctional institution administrators with the opportunity to review current issues in management and facility operation. For further information, write or call the Training Resource Center Project, Eastern Kentucky University at the address and telephone number given above.

The International Prisoners Aid Association elected a new board of directors. Officers are Raymond J. Kidney, President (Australia); Dra. E. Bouzon DeTerzano, President-Designate (Argentina); Peter Rogers, Secretary (Malaysia); and Erwin Heinzelmann, Treasurer (United States). Vice Presidents are: General A. A. Elnekera (Egypt); Gloria Mumuny (Nigeria); Renault Tremblay (Canada); Dr. Paul Wetterich (Germany); and Junichi Yoshida (Japan).

Contributors to this Issue

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